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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 254

RIN 0584–AB56

Food Distribution Programs: FDPIHO—Oklahoma Waiver Authority

AGENCY: Food and Nutrition Service, USDA.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends the regulations for the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). It reinstates the Food and Nutrition Service's authority to grant waiver requests from Indian Tribal Organizations in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO.

DATES: In accordance with the parameters set forth in 62 FR 55141 (October 23, 1997), ''Use of Direct Final Rulemaking,'' this rule will become effective on March 9, 1999, unless the Department receives written adverse comments or notices of intent to submit adverse comments postmarked on or before February 8, 1999. If adverse comments within the scope of the rulemaking are received, the Department will publish timely notification of withdrawal of this rule in the **Federal Register**.

ADDRESSES: Comments should be sent to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 502, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. Comments in response to this request may be inspected at 3101 Park Center Drive, Room 502, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final 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.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.570, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. While Indian Tribal Organizations that administer FDPIR and program participants within the State of Oklahoma will be affected by this rulemaking, any economic effect will not be significant.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Background

This direct final rule amends the FDPIHO regulations at 7 CFR 254.5(b). It reinstates the Food and Nutrition Service's (FNS) authority to grant waiver requests from Indian Tribal Organizations (ITOs) in Oklahoma to allow Indian tribal households living in urban places to participate in FDPIHO.

Part 253 of Title 7 of the Code of Federal Regulations contains the regulatory requirements for the implementation and operation of the Food Distribution Program on Indian Reservations (FDPIR) throughout the nation. However, the unique status of Indian land holdings in Oklahoma made it difficult to apply all of the provisions of Part 253 in that State. Much of the former reservation land in Oklahoma has been conveyed into the public domain. Part 254 of Title 7 resolves those difficulties by authorizing a Food Distribution Program for Indian tribal households in Oklahoma based on the unique circumstances of that State. All of the provisions of Part 253 apply to Part 254, except as specifically changed by Part 254.

On April 2, 1982, the Department issued final regulations (47 FR 14135) at 7 CFR 253.4(d) prohibiting Indian tribal households living in urban places (towns or cities with a population of 10,000 or more) outside reservation boundaries from participating in FDPIR. Because of the almost total absence of reservations in Oklahoma, the Department changed this policy in that State to apply to all urban places (7 CFR 254.5(b)). The Department implemented these requirements to support the basic purpose of FDPIR as an alternative to the Food Stamp Program—the primary Federal food assistance program. FDPIR was originally authorized out of concern that American Indians living on or near reservations may not have ready access to Food Stamp Program offices, or to food stores that are authorized to accept food stamps and have reasonable prices. However, FDPIR was not intended to replace the Food Stamp Program, particularly in urban areas. The Department believed that American Indian households living in off-reservation urban areas have reasonable access to food stamp services, and therefore, an alternative to the Food Stamp Program would not be needed for these households. Nevertheless, the regulations granted FNS the authority to approve exemption requests from ITOs that provide proper justification (see 7 CFR 253.4(d) and 7 CFR 254.5(b)). Since 1982, 16 exemption requests have been approved, including three from ITOs in Oklahoma. However, the waiver authority granted under FDPIHO regulations at 7 CFR 254.5(b) expired on September 30, 1985.

This rule reinstates FNS' authority to approve waiver requests from ITOs in Oklahoma to allow Indian tribal households living in urban places in that State to participate in FDPIHO. This rulemaking will provide all ITOs participating under either Part 253 or 254 with an equal opportunity to request waivers.

List of Subjects in 7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 254 is amended as follows:

PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for Part 254 continues to read as follows:

Authority: Pub L. 97–98, sec. 1338; Pub. L. 95–113.

§ 254.5 [Amended]

2. In § 254.5, remove the last sentence of paragraph (b).

Dated: December 4, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–395 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 95–071–2]

RIN 0579–AA75

Export Certification; Accreditation of Non-Government Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the export certification regulations to provide for the establishment of a program under which non-government facilities may become accredited to perform specific laboratory testing or phytosanitary inspection services that may serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. Prior to this rule, only tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents could be used as the basis for the issuance of Federal certificates. The accreditation criteria for particular laboratory testing and phytosanitary inspection services will be developed by the Animal and Plant Health Inspection Service in cooperation with other interested government, industry, academic, or research entities. The accreditation program will provide a mechanism for qualified non-government facilities to become accredited to perform testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Narcy G. Klag, Accreditation Program Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8469.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or reexport. Under the regulations, tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents may be used as the basis for the issuance of Federal certificates. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted. The regulations also provide for an industry-based certification, under certain conditions, of certain low-risk plant products such as kiln-dried lumber offered for export.

On November 25, 1997, we published in the **Federal Register** (62 FR 62699–62707, Docket No. 95–071–1) a proposal to amend the regulations to provide for the establishment of a program under which non-government facilities could become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport.

We solicited comments concerning our proposed rule for 60 days ending January 26, 1998. We received 34 comments by that date. The comments were from processors and distributors of agricultural commodities, State and county agricultural agencies, a seed trade association, seed companies, crop improvement associations, a university laboratory, private testing and certification services, an association of State agricultural officials, laboratory accreditation organizations, a foreign plant health agency, and an association of seed certifying officials. Although all of the commenters supported the concept of an accreditation program, all but six of them had specific concerns, questions, or suggestions regarding the proposed accreditation program. The comments are addressed below.

Role of Accredited Facilities

Several commenters referred to accredited facilities as ''private certifiers'' or as having responsibility for the issuance of phytosanitary certificates. We wish to make it clear that accredited facilities will not be ''certifiers,'' nor will accredited facilities issue phytosanitary certificates. Rather, an accredited facility would perform specific tests or inspections that would serve as the basis for phytosanitary certification; phytosanitary certificates will continue to be issued by Federal, State, or county-level inspectors, as provided by the regulations.

Handling of Samples

Two commenters raised the issue of the handling of samples submitted for testing or inspection. The commenters were concerned that the proposed rule did not address issues such as who would collect and prepare samples for testing or inspection and how the integrity of samples would be maintained during movement and while at the accredited facility. One of the commenters stated that APHIS should specify how all samples are to be collected and handled, while the second commenter suggested that a sample handling accreditation program be made part of the regulations.

We agree with the commenters that the proper handling of samples is important to any laboratory testing or inspection program. Because the procedures and requirements for the collection and handling of samples will likely vary to some extent from plant to plant or product to product, we believe that sample collection and handling should be addressed in each set of specific accreditation standards as they are prepared, rather than in a general way in the regulations. Further, because the sample handling requirements will be part of each set of specific accreditation standards, we do not believe that it is necessary to establish a separate sample handling accreditation program.

Conflict of Interest

Two commenters suggested that APHIS or State agencies should act as an intermediary between accredited laboratories and their customers, serving as the conduit for contracting and payment for services and the submission of samples for testing. Two other commenters stated that APHIS must ensure that laboratory analyses are not performed by anyone having an interest in the product to avoid conflicts of interest. These four commenters sought to separate the entity performing an inspection or test from the entity for whom the work is performed in order to prevent any influence or bias. One of them noted that the current regulations in § 353.6(a)(3) prohibit agents from performing inspections of any plants or plant products in which they or a family member are directly or indirectly financially interested, and stated that the same conflict of interest rules should apply to accredited facilities. Two different commenters foresaw the possibility that an accredited facility might be a division or affiliate of a company that would use its testing or inspection services and asked how APHIS would deal with the potential conflicts of interest inherent in a facility testing or inspecting its own plants or plant products.

The issue in all of the comments summarized in the previous paragraph appears to be whether or not an accredited facility that is connected in some way to a commercial entity for which it is performing a service will be able to conduct unbiased tests or inspections and accurately report the results of those tests or inspections. The commenters appear to be worried that an accredited facility might tailor test protocols or alter results in order to get the ''right'' answer that will please the commercial entity with which the facility is associated.

We acknowledge that it is possible that an accredited facility could attempt to provide inaccurate information to an inspector in order to secure a phytosanitary certificate. However, given the investment of time, money, and other resources that becoming accredited would require, we do not believe that an accredited facility would risk having its accreditation withdrawn by falsely certifying that a specific test or inspection had been conducted and its results faithfully reported.

Falsified test or inspection results can be detected by inspectors conducting post-accreditation reviews or audits of facilities or through random checks by certifying officials of plants or plant products for which a phytosanitary certificate is sought. Under § 353.8(b)(4), facilities must agree to be periodically assessed and evaluated by means of proficiency testing or check samples in order to retain accreditation. Further, the tests or inspections that accredited facilities will perform are for pests or diseases that are likely to manifest themselves at some point. Presumably, an importing country is asking for a phytosanitary certificate because a certain pest or disease that may be present in the United States does not exist or is not widely prevalent in that importing country; if the pest or disease is detected in the importing country following the receipt of a shipment certified on the basis of falsified test results, it is likely that the pest or disease will be traced to that shipment. If it can be confirmed that the exporting company, through its accredited facility, used false test results to obtain a phytosanitary certificate, several consequences are possible: The facility's accreditation could be withdrawn, the facility or its parent company could be subject to civil or even criminal penalties in the United States or the importing country, and the parent company would likely lose the trust—and the business—of its customers. We believe that the likelihood of detection and the consequences associated with falsifying results will serve as a deterrent in those cases where such deterrence is necessary.

Composition of Assessment Teams

One commenter asked if competitors of a facility seeking accreditation would be involved in a facility's pre-accreditation assessment. The commenter stated that such participation would be inappropriate because the assessment team members must be completely impartial and assess the facility on the standards established by the rule without any appearance of bias. Another commenter asked if State plant regulatory agencies would be involved in the pre-accreditation assessment process and post-accreditation activities.

We do not anticipate that we will seek the participation of operators or employees of commercial laboratories or inspection services in the pre-accreditation assessment process. We do expect that there will be instances when we will seek the formal assistance of our cooperators in State plant regulatory agencies in the pre-accreditation assessment process or in post-accreditation facility visits and reviews. In addition, we would welcome the participation of our State cooperators in any accreditation activities being conducted in their respective States.

Post-Accreditation Supervision

One commenter stated that his organization could support the concept of accreditation only if APHIS maintained continuous, day-to-day oversight of the program through the appointment of an accreditation manager who would administer the application procedures and audits, arrange for proficiency testing, develop and provide training for seed health tests and field inspection procedures, issue accreditation credentials, maintain accreditation records, and establish

standard tests for laboratory and field inspection procedures.

The need for program management such as that described by the commenter was recognized by APHIS at the time the proposed rule was being prepared, so there are already plans to appoint an accreditation manager within APHIS' Plant Protection and Quarantine program to perform the tasks identified by the commenter.

Another commenter questioned whether APHIS had sufficient staff to implement and adequately monitor the accreditation program. The commenter stated that there are universities and State departments of agriculture that could serve as accreditors to more efficiently perform the actual accreditation work for APHIS; APHIS' role could be purely administrative, with the bulk of operational work being accomplished by the State-level accreditors.

As noted above, an accreditation manager will be appointed in APHIS to oversee the program's operation. We anticipate that the accreditation manager will work closely with the export certification program's traditional cooperators at the State and county level, relying on them for advice and assistance with regard to accreditation activities in their geographic area or within their realm of expertise. As with other aspects of the program, the extent to which State cooperators will become involved in accreditation-related activities will depend largely on demand for accreditation and the number of facilities that become accredited.

One commenter had several questions regarding post-accreditation supervision of facilities: What will be the frequency of post-accreditation audits or inspections? Will State plant regulatory agencies be able to request an audit or inspection if an irregularity is noted or a complaint is received? Will State plant regulatory agencies be notified of the results of those audits or inspections?

The frequency of post-accreditation audits and inspections will be determined, at least in part, by the type of service a facility becomes accredited to perform. The performance of field inspections and even some types of laboratory testing will be subject to seasonal changes and other variables, so it would be difficult to prescribe a universal audit schedule as part of this final rule. Thus, the frequency of post-accreditation audits and inspections for a particular area of accreditation will be determined at the same time the specific standards for accreditation in that area are developed.

We would encourage State plant regulatory agencies, as well as other entities that have dealings with an accredited facility, to report any observed deficiencies or irregularities in an accredited facility to the APHIS accreditation manager or to an inspector. APHIS will review all reports received and, as appropriate, will perform an inspection or audit in order to resolve any issues that arise regarding accredited facilities. As cooperators in APHIS' phytosanitary export certification program, State plant regulatory agencies will be kept informed of developments in the program, including those related to accredited facilities.

One other commenter was concerned that the quality of inspection could suffer under an accreditation plan. Although he offered no specific examples, the commenter stated that in some situations where self-inspection has been performed, quality problems such as overlooking specific infestations or diseases have manifested themselves. If the quality of inspection is reduced or is unacceptable to an importing country, the commenter concluded, the U.S. phytosanitary inspection system as a whole may come under scrutiny.

We agree with the commenter's assertion that the quality of inspection must be maintained to ensure the continued confidence of our trading partners. We believe that the accreditation program provided for by this final rule, with its focus on standards and required levels of performance, will preserve—and even enhance—the quality and credibility of the U.S. phytosanitary certification program.

Issuance of Certificates

One commenter asked if accredited facilities would apply to APHIS or to State cooperators for export certificates and, if application for a certificate was made to a State cooperator, whether the State cooperator would be required to issue a certificate.

The regulations in § 353.7 state that phytosanitary certificates are signed and issued by inspectors; an inspector, as defined in § 353.1, could be either an APHIS employee or a State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties as to the phytosanitary condition of plant products. Any shipment offered for certification that meets the requirements of the importing country and is in compliance with the regulations is expected to be certified; to do otherwise would be a disservice to—and likely challenged by—those individuals seeking a certificate.

On a similar note, a commenter from a county agricultural agency stated that she was concerned about the possibility of placing the county in a position of greater liability if she had to issue a phytosanitary certificate based on laboratory analysis or field inspections completed by a private company rather than a public agency.

No liability should attach to a certifying official as long as the certification is made in accordance with the regulations. The certifying statement on the phytosanitary certificate states that ''This is to certify that the plants or plant products described below have been inspected according to appropriate procedures and are considered free from quarantine pests * * *'' Using test or inspection results provided by an accredited facility is an appropriate and defensible procedure.

Costs of Accreditation

Several commenters were opposed to the provisions of the proposed rule that would require the operator of a facility seeking accreditation to enter into a trust fund agreement with APHIS prior to accreditation. Several commenters stated that private entities need to know in advance what the costs associated with the accreditation process will be in order to be able to accurately calculate all costs and benefits of the system. The commenters further stated that the failure to accurately calculate all costs of accreditation, at all levels of administration, could lead to an accreditation system that is not viable, cost effective, or competitive in delivering phytosanitary certification services. The commenters suggested that the trust fund requirement apply only to entities that have not completed the necessary cost analyses for implementing an accreditation scheme for their constituents, or for entities that have not established a cash reserve to cover the startup and long-term administration costs of accreditation.

Given the tenor of those comments, it appears that the purpose and scope of the trust fund agreement may not have been fully explained in the proposed rule. We do not intend for the trust fund to be a single pool of money funded by a particular industry segment from which APHIS will draw to fund its activities in a certain area of accreditation. Associations representing certain industry sectors may certainly play a role in helping to develop accreditation standards that will be applied to facilities within their industry, but when it comes to the actual accreditation of facilities, those

facilities will individually enter into trust fund agreements with APHIS to cover the costs of their accreditation.

Under a trust fund agreement, APHIS will, in advance, provide the facility's operator with an estimate of the costs it expects to incur through its involvement in the pre-accreditation assessment process. As particular standards are developed, we will be better able to forecast that cost and the costs of the maintenance of the facility's accreditation. The operator of the facility would then deposit a certified or cashier's check with APHIS for the amount of the estimated costs, and the pre-accreditation assessment process would begin. If the deposit is not sufficient to meet all costs incurred by APHIS, the facility operator, under the terms of the trust fund agreement, would deposit another certified or cashier's check with APHIS for the amount of the remaining costs before APHIS' services would be completed. After a final audit at the conclusion of the pre-accreditation assessment, any overpayment of funds would be returned to the operator of the facility or held on account until needed for future activities related to the maintenance of the facility's accreditation.

Because this is a new program, we cannot say with certainty what all the costs will be and whether this trust fund agreement process will be the best way of handling the recovery of the costs of our participation in the accreditation process. Trust fund agreements have been used successfully in other APHIS programs, and we believe that they will be useful in this accreditation program. However, if the agreement process proves unwieldy or unworkable, we will propose to amend the regulations to modify the way in which APHIS recovers its costs.

Costs of Services

One commenter was concerned that APHIS' intention to recover all costs associated with its administration of the accreditation program would result in fees that would be so high that they would render the program infeasible.

As explained in the proposed rule, the administrative expenses that we expect to incur and recover will be for items such as laboratory fees for evaluating check test results and all salaries, travel expenses, and other incidental expenses incurred by APHIS in performing the pre-accreditation assessment. As long as we could determine that it would be feasible and practical to establish an accreditation program in a particular area to begin with, we do not expect that costs related to those activities would be prohibitive. To make that consideration clear, we have amended § 353.8(b)(1) in this final rule to provide that APHIS will make a determination regarding the practicality of establishing an accreditation program in a particular area before beginning the process of developing the standards that would be applicable to accreditation in that area. Further, participation in the accreditation program will be voluntary, and an estimate of costs will be provided to each applicant before APHIS begins any accreditation-related activities, so there will be ample opportunity for the applicant to consider whether accreditation will be desirable from a cost perspective.

One commenter stated that the services of accredited facilities could become very expensive for industry if private entities providing services charged enough to cover their expenses. The commenter concluded that because some State agencies charge less than what is actually necessary to cover their expenses, the fees charged by private facilities will likely exceed the fees charged by government facilities. Although it is possible that an accredited entity could charge a higher fee than a public agency, a customer may still choose to use the accredited entity's services if the customer receives an added benefit such as faster reporting of results. However, if an accredited entity charges fees that are perceived to be too high by prospective customers, it is likely that those customers would take their business elsewhere, i.e., to a government facility or other accredited facility. Private entities providing inspection or testing services will be subject to the same market forces as any other entity providing services and will have to maintain a competitive fee schedule to remain in business.

Standards for Field Inspection

One commenter agreed that the four major accreditation assessment areas (physical plant, equipment, methods of testing or inspection, and personnel) were appropriate, but stated that quality control is more problematic regarding the accreditation of field inspectors. The commenter noted that an accreditor cannot place a diseased or infested plant in a field as part of a pre-accreditation assessment to see if it is detected and reported. The commenter concluded by stating that special attention must be given to the need for credible assessment mechanisms when standards are set for accrediting private entities to perform field inspections.

We acknowledge that assessing proficiency in the area of field inspection may prove to be more of a challenge than assessing proficiency in the somewhat more easily quantifiable area of laboratory testing. The development of specific standards for accreditation to conduct field inspections (as well as all other specific standards) will be a collaborative process, as APHIS will seek the input, cooperation, and comments of industry, academic, government, or other personnel with expertise or interest in the areas that will be assessed. We are confident that this collaborative process will result in field inspection accreditation standards that will provide an accurate assessment of an individual or entity seeking accreditation in that area.

Withdrawal or Denial of Accreditation

One commenter was concerned that the 10 days that would be provided for the operator of a facility to appeal a denial or withdrawal of accreditation would not allow enough time to develop an adequate appeal. The commenter stated that 30 days should be provided to file an appeal, and that the Administrator's decision regarding an appeal should also be made within 30 days, rather than the proposed ''as promptly as circumstances permit.''

We do not believe that it is necessary to extend the time for a person to submit an appeal. To appeal a denial, the operator must provide the reasons why he or she believes that accreditation was wrongfully denied; to appeal a withdrawal, the operator must provide all of the facts and reasons upon which he or she relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal. Because APHIS will inform the operator of all of the reasons on which it based its denial or withdrawal of accreditation, and the appeal is, in essence, the operator's specific response to each of those stated reasons, we believe that 10 days is a sufficient amount of time for an operator to prepare an appeal. Although the Administrator will, in most cases, be able to respond to an appeal in less than the 30-day limit suggested by the commenter, we have retained ''as promptly as circumstances permit'' as the time frame for the Administrator's decision so as not to limit our ability to investigate or review the circumstances surrounding a withdrawal or denial in light of the information provided in the appeal.

Two other commenters were concerned about the length of time that could potentially pass before the withdrawal of a facility's accreditation became effective due to the proposed provisions for the operator to appeal the withdrawal. Both commenters stated

that allowing an accredited entity to continue to perform phytosanitary work while an appeal was filed and heard could result in the issuance of additional invalid phytosanitary certificates. One of those commenters further stated that the proposed provision for immediate withdrawal to protect ''public health, interest, or safety'' constituted a high legal standard that might be easily and often challenged.

As noted by one of the commenters, the regulations will provide for the withdrawal of a facility's accreditation to become effective immediately when the Administrator determines that an immediate withdrawal action is necessary to protect the public health, interest, or safety. The withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility and will continue in effect pending the completion of the proceeding, and any judicial review of the proceeding, unless otherwise ordered by the Administrator. Because a credible phytosanitary export certification program, which greatly facilitates U.S. export trade in plants and plant products, is clearly in the public interest, we believe that we can justify the immediate withdrawal of a facility's accreditation when circumstances warrant.

Accreditation of Government Facilities

Several commenters discussed the apparent disparity between the requirements for government and non-government facilities, each making an argument for a different degree of uniformity between the public and private facilities. One commenter stated that APHIS should provide government facilities with copies of the standards and procedures and minimum recordkeeping guidelines, and should provide training in the standards at no charge to the government facility as part of the cooperative agreement between APHIS and the States. A second commenter stated that APHIS should require all entities, both government and non-government, to conduct their diagnostic tests or field inspections in accordance with the standards and procedures. A third commenter suggested that government facilities should be able to become accredited if they choose to do so, while a fourth commenter stated that accreditation should be required for both government and non-government facilities. Another commenter stated that the draft North American Plant Protection Organization (NAPPO) accreditation standards mentioned in the proposed rule clearly state that all personnel carrying out the same phytosanitary certification inspection functions, be they government or non-government personnel, must meet the same standards, so government facilities should be required to be accredited. All of these commenters cited the need for standard testing and inspection protocols and warned that failure to provide for coordination in that area could result in discrepancies in the U.S. phytosanitary certification system and a subsequent erosion in the confidence of importing countries with regard to that system.

The accreditation provided for by the final rule is, in essence, the means by which APHIS can approve a non-government facility to perform, in an official capacity, the same tests or inspections that Federal and State laboratories and personnel currently perform in support of the phytosanitary export certification program. As such, there is no reason to require facilities operated by a State or other governmental entity to become accredited. That being said, we do agree with those commenters who have pointed out the need for standardization and uniformity in phytosanitary testing and inspection. When developing specific standards for a particular area of accreditation, we will solicit and encourage the participation of all interested parties in the public and private sectors and academia, and we expect the resulting standards will reflect the best available science, processes, and methods. Once completed, those standards will be used not only to evaluate facilities seeking accreditation, but will be distributed to Federal and State facilities performing phytosanitary certification work to ensure that they are using the best available science, processes, and methods.

Promulgation of Standards

Several commenters were concerned that the specific standards for accreditation would be subject to notice and comment rulemaking after they had been developed and before they could be applied to the accreditation of non-government facilities. These commenters stated that having to publish standards in the **Federal Register** would result in delays that would have a negative effect on the entire accreditation program. Most of these commenters stated that APHIS must make a clear distinction between those standards that would require publication in the **Federal Register** and those that would not, suggesting that basic, generally applicable standards might be promulgated through rulemaking, while items with more limited applicability, such as the protocols for a specific test, could be made available as part of the guidelines that apply to a specific area of accreditation.

We recognize the commenters' concerns and agree that the development and promulgation of specific standards must be accomplished in a manner that will allow the program to grow and adapt to new technologies without undue process-driven delays. At the same time, however, we must balance that desire for responsiveness and flexibility with the need for program standards that are enforceable and that have been developed with the necessary level of public participation. Because this final rule only makes specific accreditation programs possible and does not itself contain any specific standards, it is difficult to conclusively define what will and will not be included when standards are published. As an example, an accreditation standard might call for a particular test to be performed; while the type and purpose of the test will be published with the criteria for interpreting test results and other aspects of the standard, the detailed instructions and protocols for conducting the actual test itself would not necessarily have to be published. Our goal is to develop and promulgate standards in a manner that will allow the process to be responsive and flexible while ensuring that the standards themselves are fair and enforceable.

Use of Subcontractors

Four of the commenters were concerned about the provisions of the proposed rule that would allow the use of subcontractors by accredited facilities. One comment, from a foreign agricultural agency, stated that his agency viewed the use of subcontractors as a further delegation by APHIS of its phytosanitary certification duties. The commenter closed by saying that APHIS must negotiate such delegations with its foreign counterparts before proceeding with allowing the use of contractors. The second commenter noted that although the proposed rule would provide for a review of a subcontractor's qualifications, there are no limits placed on the services the subcontractor could provide. The commenter was concerned that an accredited facility might use a subcontractor to, for example, entirely conduct a test that the facility had been accredited to conduct. The commenter also pointed out that the proposed rule did not prohibit a subcontractor to itself use a subcontractor. The third commenter was concerned that an

accredited facility that was facing the withdrawal of its accreditation might attempt to shift the blame for their shortcomings to a subcontractor and simply fire one subcontractor and hire another in an effort to retain accreditation. The fourth commenter stated that allowing the use of subcontractors by accredited facilities would make it very difficult to maintain program credibility and would allow for too much extended liability.

We believe that all four of the commenters have made valid points that bring into question the advisability of allowing accredited facilities to use subcontractors. Therefore, in this final rule, we have eliminated the reference to the use of subcontractors that had been in § 353.8(b)(3)(iv) of the proposed rule.

Use of International Standards

Two of the commenters recommended that APHIS utilize private sector accreditation services for government and non-government laboratories. These commenters stated that accrediting laboratories in accordance with the International Standards Organization's (ISO's) internationally recognized ISO Guide 25 would be a more reasonable and less burdensome approach to accreditation and would be more easily recognized internationally. One commenter noted that other Federal agencies accept third-party laboratory accreditation in areas such as environmental lead and asbestos or electromagnetic compatibility testing. Additionally, that commenter stated, Public Law 104–113 mandates the utilization of private sector laboratory accreditation services.

As explained above in the response to a previous comment, the accreditation program provided by this final rule is a way for APHIS to approve a non-government facility to perform tests or inspections in support of the phytosanitary export certification program. The program is not intended as, nor has it been presented as, a full-blown laboratory evaluation and accreditation program such as those provided under the auspices of the ISO. The underlying principles of ISO certification, such as quality documentation and accountability, certainly will be applied when specific standards are developed, but we do not believe that it is necessary for a non-government facility to receive ISO 25 certification before it can perform testing or inspection services under the phytosanitary export certification program.

Qualifications

One commenter asked what the minimum qualifications for the accreditation of these private phytosanitary services would be, and how and when the standards would be established. Two other commenters stated that the minimum qualifications for accredited inspectors must be established and should be at least equal to the minimum qualifications required of county, State, or Federal inspectors.

Specific qualifications for personnel involved in any particular area of accreditation are not within the scope of this final rule. As discussed in the proposed rule, personnel standards are one of the areas in which non-government facilities will be assessed and will, therefore, be one of the areas for which specific standards will be developed. Generally speaking, the qualifications of employees of non-government facilities will be similar to those of government laboratory personnel and inspectors. The draft NAPPO standard for accreditation mentioned in the proposed rule states that accredited personnel should not be held to standards that are higher than those for government personnel, a concept with which we agree.

Availability of Information

Two of the commenters wanted to know if the information generated by accredited facilities in the course of their inspection or testing activities would be available for review by APHIS or its State cooperators. One of the commenters stated such data must be available for review to ensure the validity of the testing process. The other commenter stated that because State plant regulatory agencies are cooperators with APHIS in both pest detection and export commodity certification, it is essential that States have access to such information in order to maintain the credibility of their own activities in those areas.

As standards are developed for specific areas of accreditation, we will ensure that recordkeeping is addressed in a manner appropriate to each area of accreditation. In general, we expect to require that records related to a facility's area of accreditation be made available to APHIS during the pre-accreditation assessment and during subsequent post-accreditation reviews or audits. Similarly, the specific standards will include, as appropriate, provisions for each accredited facility to report pests and diseases to APHIS or the State plant health agency for further action.

Notification of Changes

Two commenters noted that the proposed regulations call for a facility to notify APHIS ''as soon as circumstances permit'' when there is a change in key management personnel or facility staff, or when there is a change involving the location, ownership, physical plant, equipment, or relevant conditions at the plant. Both commenters stated that ''as soon as circumstances permit'' was too vague a time frame given the potential importance of such changes. One of those commenters suggested that a facility should be required to notify APHIS within 48 hours of such changes, while the other recommended that notice be given to APHIS within 10 days. We agree with the commenters that a more concrete time frame for notification is desirable given the potential impact of such changes, so we have amended paragraphs (b)(4)(v) and (b)(4)(vi) of § 353.8 to require the operator of a facility to notify APHIS as soon as possible, but no more than 10 days following its occurrence, of any change in the elements set forth in those paragraphs.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule amends the export certification regulations to provide for the establishment of a program under which non-government facilities may become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of Federal phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. The accreditation criteria for particular laboratory testing and phytosanitary inspection services will be developed by APHIS in cooperation with other interested individuals or government, industry, academic, or research entities. As specific accreditation criteria are developed, the accreditation program will provide a mechanism for qualified non-government facilities to become accredited to perform testing or inspection services that may be used as supporting documentation for the

issuance of certificates for certain plants or plant products.

The regulations in this rule are intended only to provide a framework upon which accreditation programs for specific functions may be established, so they will not, in and of themselves, entail any costs to APHIS or any non-government facility. However, any specific accreditation program that is established under these regulations will entail costs to both the entities being accredited and the accrediting body, i.e., APHIS. Because the accreditation program is expected to be self-supporting, the costs to APHIS will be recouped through accreditation fees. The fees charged by APHIS in connection with the initial accreditation of a non-government facility and the maintenance of that accreditation will, therefore, have to be adequate to recover the costs incurred by the government in the course of APHIS' accreditation activities. We expect that the costs that will be reimbursed will be largely attributable to the cost of transportation for the assessors to travel to the site of the facility, lodging for the assessors, their salary and per diem, any laboratory fees charged for evaluating check test results, and administrative expenses. Costs for specific accreditation programs will vary depending on the range of activities for which a facility seeks accreditation, the number of assessors needed to adequately conduct a pre-accreditation assessment, the type and number of any proficiency tests that will have to be conducted, and the frequency with which post-accreditation evaluation activities such as check tests and site visits will have to be conducted.

The regulations stipulate that APHIS will provide an estimate of its anticipated fees to the operator of the facility prior to undertaking any activities that will result in fees being charged to a facility. Participation in any accreditation program developed under these regulations will be voluntary. At this time, we estimate that 15 individual non-government facilities are likely to seek and maintain accreditation annually on about 82 accredited procedures, as long as the costs of participating in an accreditation program are lower than the benefits they receive from the program. As a result, this program will have to meet the test of the marketplace.

The domestic seed industry, through the American Seed Trade Association, has indicated its interest in establishing an accreditation program for seed health testing and field inspection of seed, so we have used the domestic seed industry to illustrate the potential benefits that may result from the establishment of specific accreditation programs.

The seed industry is expected to benefit from the establishment of an accreditation program because domestic seed exporters routinely require the services of inspectors and agents in order to obtain the phytosanitary certification required by most, if not all, importing countries; benefits can be realized in terms of more timely certifications, which in turn can lead to reduced costs as well as increased U.S. exports.

The value of seed exported from the United States to other countries continues to grow rapidly, from $665 million in 1994–95 (July to June), to $705 million in 1995–96, to more than $800 million projected for 1996–97. There has been a concomitant rise in demand for laboratory testing and phytosanitary inspection services to meet other countries' import requirements. The ability of Federal, State, and county testing and inspection services to meet this growing demand will be increasingly strained. Already there are instances in which the accreditation of non-government facilities would have prevented the loss of export sales.

For example, some seed export opportunities have been forfeited because the results of pre-harvest field inspections are usually not known until after harvest. It is common for seed from several fields to be blended before shipment. If the sample from one field is subsequently reported to contain an actionable pest, then none of the blended seed—which may have been harvested from as many as eight or nine fields—could be exported. In one case in which this occurred, the affected seed company lost foreign sales worth $250,000. Such losses are much less likely to occur if there is more timely reporting of pre-harvest inspections; accredited non-government inspection facilities may be able to make such timely reports. In general, non-government testing and inspection services are expected to be completed with minimal delay, leading to greater marketing flexibility and lower risk of lost sales.

Additional benefits, of even greater potential significance, can be gained through the standardization of testing and inspection protocols that will result from the establishment of accreditation standards, particularly when internationally recognized standards are used. Major seed trading partners of the United States, such as Canada, France, and The Netherlands, have national seed health organizations that address seed health issues in part by employing laboratory accreditation protocols. The standards that will underlie the accreditation of non-government facilities in the United States can help reduce the differences among international phytosanitary regulations, thereby expediting U.S. seed exports.

Accreditation of non-government facilities, by promoting more streamlined exports based on internationally recognized standards, can also be expected to benefit exports outside of the seed industry. As a self-supporting system, private firms that expect benefits in excess of costs of accreditation are likely to participate. In addition to the net benefits received by these firms directly, society as a whole will benefit from enhanced trade.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0130.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 353 as follows:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 continues to read as follows:

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 353.1, a definition of *non-government facility* is added, in alphabetical order, to read as follows:

§ 353.1 Definitions.

* * * * *

Non-government facility. A laboratory, research facility, inspection service, or other entity that is maintained, at least in part, for the purpose of providing laboratory testing or phytosanitary inspection services and that is not operated by the Federal Government or by the government of a State or a subdivision of a State.

* * * * *

3. In § 353.7, paragraphs (a)(4), (b)(4), and (c)(4) are each amended by adding a new sentence at the end of each paragraph to read as follows:

§ 353.7 Certificates.

(a) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of a laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

(b) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of a laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

(c) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of a laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

4. A new § 353.8 is added to read as follows:

§ 353.8 Accreditation of non-government facilities.

(a) The Administrator may accredit a non-government facility to perform specific laboratory testing or phytosanitary inspection services if the Administrator determines that the non-government facility meets the criteria of paragraph (b) of this section.[1]

(1) A non-government facility's compliance with the criteria of paragraph (b) of this section shall be determined through an assessment of the facility and its fitness to conduct the laboratory testing or phytosanitary inspection services for which it seeks to be accredited. If, after evaluating the results of the assessment, the Administrator determines that the facility meets the accreditation criteria, the facility's application for accreditation will be approved.

(2) The Administrator may deny accreditation to, or withdraw the accreditation of, any non-government facility to conduct laboratory testing or phytosanitary inspection services upon a determination that the facility does not meet the criteria for accreditation or maintenance of accreditation under paragraph (b) of this section and has failed to take the remedial action recommended to correct identified deficiencies.

(i) In the case of a denial, the operator of the facility will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the facility was wrongfully denied accreditation. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(ii) In the case of withdrawal, before such action is taken, the operator of the facility will be informed of the reasons for the proposed withdrawal. The operator of the facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the accreditation of the facility. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation will be given as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(3) The Administrator will withdraw the accreditation of a non-government facility if the operator of the facility informs APHIS in writing that the facility wishes to terminate its accredited status.

(4) A non-government facility whose accreditation has been denied or withdrawn may reapply for accreditation using the application procedures in paragraph (b) of this section. If the facility's accreditation was denied or withdrawn under the provisions of paragraph (a)(2) of this section, the facility operator must include with the application written documentation specifying what actions have been taken to correct the conditions that led to the denial or withdrawal of accreditation.

(5) All information gathered during the course of a non-government facility's assessment and during the term of its accreditation will be treated by APHIS with the appropriate level of confidentiality, as set forth in the U.S. Department of Agriculture's administrative regulations in § 1.11 of this title.

(b) *Criteria for accreditation of non-government facilities.* (1) Specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection are set forth in this part and may be obtained by writing to APHIS. If specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection have not been promulgated by APHIS, and the Administrator determines that accreditation in that area is practical, APHIS will develop appropriate standards applicable to accreditation in the area for which the non-government facility is seeking accreditation and publish a notice of proposed rulemaking in the **Federal Register** to inform the public and other interested persons of the opportunity to

[1] A list of accredited non-government facilities may be obtained by writing to Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236.

comment on and participate in the development of those standards.

(2) The operator of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection shall submit an application to the Administrator. The application must be completed and signed by the operator of the facility or his or her authorized representative and must contain the following:

(i) Legal name and full address of the facility;

(ii) Name, address, and telephone and fax number of the operator of the facility or his or her authorized representative;

(iii) A description of the facility, including its physical plant, primary function, scope of operation, and, if applicable, its relationship to a larger corporate entity; and

(iv) A description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation.

(3) Upon receipt of the application, APHIS will review the application to identify the scope of the assessment that will be required to adequately review the facility's fitness to conduct the laboratory testing or phytosanitary inspection services for which it is seeking accreditation. Before the assessment of the facility begins, the applicant's representative must agree, in writing, to fulfill the accreditation procedure, especially to receive the assessment team, to supply any information needed for the evaluation of the facility, and to enter into a trust fund agreement as provided by paragraph (c) of this section to pay the fees charged to the applicant facility regardless of the result of the assessment and to pay the charges of subsequent maintenance of the accreditation of the facility. Once the agreement has been signed, APHIS will assemble an assessment team and commence the assessment as soon as circumstances permit. The assessment team will measure the facility's fitness to conduct the laboratory testing or phytosanitary inspection services for which it is seeking accreditation against the specific standards identified by the Administrator for those services by reviewing the facility in the following areas:

(i) *Physical plant.* The facility's physical plant (e.g., laboratory space, office space, greenhouses, vehicles, etc.) must meet the criteria identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation.

(ii) *Equipment.* The facility's personnel must possess or have unrestricted access to the equipment (e.g., microscopes, computers, scales, triers, etc.) identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation. The calibration and monitoring of that equipment must be documented and conform to prescribed standards.

(iii) *Methods of testing or inspection.* The facility must have a quality manual or equivalent documentation that describes the system in place at the facility for the conduct of the laboratory testing or phytosanitary inspection services for which the facility seeks accreditation. The manual must be available to, and in use by, the facility personnel who perform the services. The methods and procedures followed by the facility to conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation must be commensurate with those identified in the accreditation standards and must be consistent with or equivalent to recognized international standards for such testing or inspection.

(iv) *Personnel.* The management and facility personnel accountable for the laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation must be identified and must possess the training, education, or experience identified in the accreditation standards as necessary to properly conduct the testing or inspection services for which the facility seeks accreditation, and that training, education, or experience must be documented.

(4) To retain accreditation, the facility must agree to:

(i) Observe the specific standards applicable to its area of accreditation;

(ii) Be assessed and evaluated on a periodic basis by means of proficiency testing or check samples;

(iii) Demonstrate on request that it is able to perform the tests or inspection services representative of those for which it is accredited;

(iv) Resolve all identified deficiencies;

(v) Notify APHIS as soon as possible, but no more than 10 days following its occurrence, of any change in key management personnel or facility staff accountable for the laboratory testing or phytosanitary inspection services for which the facility is accredited; and

(vi) Report to APHIS as soon as possible, but no more than 10 days following its occurrence, any change involving the location, ownership, physical plant, equipment, or other conditions that existed at the facility at the time accreditation was granted.

(c) *Fees and trust fund agreement.* The fees charged by APHIS in connection with the initial accreditation of a non-government facility and the maintenance of that accreditation shall be adequate to recover the costs incurred by the government in the course of APHIS' accreditation activities. To cover those costs, the operator of the facility seeking accreditation must enter into a trust fund agreement with APHIS under which the operator of the facility will pay in advance all estimated costs that APHIS expects to incur through its involvement in the pre-accreditation assessment process and the maintenance of the facility's accreditation. Those costs shall include administrative expenses incurred in those activities, such as laboratory fees for evaluating check test results, and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the APHIS in performing those activities. The operator of the facility must deposit a certified or cashier's check with APHIS for the amount of the costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the operator of the facility must deposit another certified or cashier's check with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS' services will be completed. After a final audit at the conclusion of the pre-accreditation assessment, any overpayment of funds will be returned to the operator of the facility or held on account until needed for future activities related to the maintenance of the facility's accreditation.

Done in Washington, DC, this 5th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–396 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–07–AD; Amendment 39–10978; AD 99–01–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires modification of the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU) to certain probe heat computers (PHC). This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent simultaneous loss of heating to pitot probes 1 and 3, which could result in incorrect airspeed indications to both the pilot's and first officer's airspeed indication systems. Malfunction of these systems could result in reduced controllability of the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 27, 1998 (63 FR 57263). That action proposed to require modification of the airplane wiring to separate the electrical inputs sent by the engine interface units (EIU) to certain probe heat computers (PHC).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All of the commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required modification (including testing), at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $27,000, or $180 per airplane.

Should an operator be required to re-test modified wiring, it will take approximately 1 additional work hour per airplane to accomplish the test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary re-test required by this AD on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–13 Airbus Industrie: Amendment 39–10978. Docket 98–NM–07–AD.

Applicability: Model A319, A320, and A321 series airplanes; excluding airplanes on which Airbus Modification 26403 or Airbus Service Bulletin A320–30–1036, Revision 02, dated February 4, 1998, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent simultaneous loss of heating to pitot probes 1 and 3, which could result in incorrect airspeed indications to both the pilot's and first officer's airspeed indication systems, and reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the airplane wiring to separate the electrical inputs sent by the engine interface units to probe heat computers 1 and 3, and test the modified wiring; in accordance with the service bulletin referenced in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes equipped with engines manufactured by CFM International (CFMI): Modify and test in accordance with Airbus

Service Bulletin A320–30–1036, dated May 9, 1997; or Airbus Service Bulletin A320–30–1036, Revision 02, dated February 4, 1998.

Note 2: For airplanes equipped with CFMI engines: Accomplishment of the modification and test in accordance with Airbus Service Bulletin A320–30–1036, Revision 01, dated July 7, 1997, is considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) For airplanes equipped with engines manufactured by International Aero Engines AG (IAE): Modify and test in accordance with Airbus Service Bulletin A320–30–1036, Revision 02, dated February 4, 1998.

Note 3: For airplanes equipped with IAE engines: Accomplishment of the modification in accordance with Airbus Service Bulletin A320–30–1036, dated May 9, 1997, or Revision 01, dated July 7, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the modification specified by paragraph (a)(2) of this AD, provided that the modification is tested in accordance with the procedures specified in Airbus Service Bulletin A320–30–1036, Revision 02, dated February 4, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The modification and test shall be done in accordance with Airbus Service Bulletin A320–30–1036, dated May 9, 1997; or Airbus Service Bulletin A320–30–1036, Revision 02, dated February 4, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 97–203–102(B)R1 and 98–152–114(B), both dated April 8, 1998.

(e) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–50 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–297–AD; Amendment 39–10980; AD 99–01–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes. This action requires repetitive operational tests to ensure proper operation of the actuator of the secondary locks of the thrust reversers; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the inadvertent opening of a thrust reverser door in the event of failure of the primary and secondary locks of the thrust reverser. Such inadvertent opening could result in reduced controllability of the airplane.

DATES: Effective January 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; and ROHR, Inc., 805 Lagoon Drive, Chula Vista, California 91912. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes. The DGAC advises that it has received reports indicating that the thrust reverser ''UNLOCKED'' warning message has been displayed on the electronic centralized aircraft monitor (ECAM) in the cockpit during takeoff and, in some instances, during flight. This warning message indicates failure of the primary lock of the thrust reverser. Failure of the primary locks has been attributed to binding/stiffness of the internal mechanism. In all cases, the thrust reverser doors were maintained closed by the secondary locks of the thrust reversers. No defects of the secondary locks have been reported. Malfunction of the actuator of the secondary lock of the thrust reverser, in conjunction with a failure of the primary lock, could result in inadvertent opening of a thrust reverser door. Such inadvertent opening, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A340–78–4012, Revision 01, dated December 19, 1996, which describes procedures for repetitive operational tests (referred to in the service bulletin as inspections), to ensure proper operation of the actuator of the secondary locks of the thrust reversers. The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 96–245–050(B)R1, dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France. Additionally, the DGAC specifies an alternate means of compliance for certain airplanes on which another modification has been accomplished.

The Airbus service bulletin references ROHR Service Bulletin RA34078–47,

Revision 1, dated November 30, 1996, which describes procedures for repetitive operational tests of the secondary locks of the thrust reversers, and corrective actions. The corrective actions involve replacement of the actuator of the secondary lock with a new or serviceable acturator, if necessary.

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

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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 the 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, this AD is being issued to prevent the inadvertent opening of a thrust reverser door in the event of failure of the primary and secondary locks of the thrust reverser. Such inadvertent opening could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $480 per airplane, per test cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–297–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–15 Airbus Industrie: Amendment 39–10980. Docket 98–NM–297–AD.

Applicability: All Model A340–211, –212, –213, –311, –312, and –313 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inadvertent opening of a thrust reverser door in the event of failure of the primary and secondary locks of the thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, prior to the accumulation of 1,300 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform an operational test (inspection) to ensure proper operation of the actuator of the secondary locks of the thrust reversers, in accordance with Airbus Service Bulletin A340–78–4012, Revision 01, dated December 19, 1996. Thereafter, repeat the operational test at intervals not to exceed 1,300 flight hours.

Note 2: The Airbus service bulletin references ROHR Service Bulletin RA34078–47, Revision 1, dated November 30, 1996, which describes procedures for repetitive operational tests of the secondary locks of the thrust reversers, and corrective actions. The corrective actions involve replacement of the actuator of the secondary lock with a new or serviceable actuator, if necessary.

(b) For airplanes on which Airbus Modifications 45150 and 45486 has been installed, or on which Airbus Service Bulletin A340–78–4013, dated May 26, 1997, has been accomplished: Prior to the accumulation of 4,000 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform an operational test (inspection) as required in paragraph (a) of this AD. Thereafter, repeat the operational test at intervals not to exceed 4,000 flight hours.

(c) If any discrepancy is detected during any operational test (inspection) required by paragraph (a) or (b) of this AD, prior to further flight, replace the actuator of the secondary lock with a new or serviceable actuator, in accordance with ROHR Service Bulletin RA34078–47, Revision 1, dated November 30, 1996.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) 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.

(f) The operational tests shall be done in accordance with Airbus Service Bulletin A340–78–4012, Revision 01, dated December 19, 1996. The replacement shall be done in accordance with ROHR Service Bulletin RA34078–47, Revision 1, dated November 30, 1996, which contains the specified list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 5, 6	1	November 30, 1996.
2–4, 7	Original	September 16, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; and ROHR, Inc., 850 Lagoon Drive, Chula Vista, California 91912. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–245–050(B)R1, dated April 8, 1998.

(g) This amendment becomes effective on January 25, 1999.

Issued in Renton, Washington, on December 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–51 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–142–AD; Amendment 39–10979; AD 99–01–14]

RIN 2120–AA64

Airworthiness Directives; Honeywell IC–600 Integrated Avionics Computers, as Installed In, But Not Limited To, Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Honeywell IC–600 integrated avionics computers, that requires modification of the integrated avionics computers. This amendment is prompted by a report of integrated avionics computer failures, which caused a ''random reset'' condition of the electronic flight instrument system. The actions specified by this AD are intended to prevent such ''random reset'' conditions, which could affect the pilot's ability to control the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell Inc., Business and Commuter Aviation Systems, Box 29000, Phoenix, Arizona 85038. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Honeywell IC–600 integrated avionics computers was published in the **Federal Register** on June 3, 1998 (63 FR 30155). That

action proposed to require modification of the integrated avionics computers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Limit Applicability

One commenter requests that Learjet Model 45 airplanes be removed from the applicability of the proposed rule. The commenter indicates that there was only one Learjet Model 45 airplane with the suspect Honeywell IC–600 integrated avionics computer that received a standard certificate of airworthiness, and that airplane has been modified in accordance with the proposed rule.

The FAA concurs with the commenter's request that the Learjet Model 45 airplanes be removed from the applicability of the final rule. This decision is based on supporting documentation that there was only one Learjet Model 45 airplane with the suspect IC–600, and a modified IC–600 was installed on that airplane before delivery to the customer. Furthermore, Learjet has incorporated the required modifications into production. The part numbers related to these airplanes will be removed from the appropriate sections in the final rule. The Summary and Applicability sections, as well as paragraph (b) of the final rule, have been revised accordingly.

Request To Reduce Compliance Time and Revise the Airplane Flight Manual

One commenter requests that the compliance time for the modification in the proposed rule be reduced from 6 months to 30 days so that the unsafe condition is addressed in a more timely manner. The commenter also requests that a temporary revision to the FAA-approved Airplane Flight Manual (AFM) be issued in the interim to alert flightcrews of the potential hazards if the electronic flight instrument system fails. The commenter states that this is necessary because the unsafe condition exists today and the flightcrews may be unaware of the possibility of this potentially catastrophic condition.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules. Further, the compliance time of 6 months was established with the operator's, the manufacturer's, and FAA's concurrence. The FAA also has determined that, without prior notice and opportunity for public comment, a reduction in the compliance time is not appropriate. In light of these factors, and in consideration of the amount of time that has already elapsed since issuance of the proposed rule, the FAA has determined that further delay of this final rule is not warranted. However, if additional data are presented that would justify a reduction in the compliance time, the FAA may consider further rulemaking on this issue.

With regard to the commenter's request for an AFM revision, the FAA has considered the potential hazard for temporary loss of flight guidance and does not consider that hazard to be catastrophic. The flightcrew's ability to use the standby instruments during the 30-second rebuild of the display will allow them continued operational safety. Additionally, it was determined that at no time did the display present any hazardously misleading information. Therefore, the FAA does not find it appropriate to require a revision of the AFM. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 19 airplanes of U.S. registry will be affected by this proposed AD. It will take approximately 2 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $2,280, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–14 Honeywell: Amendment 39–10979. Docket 98–NM–142–AD.

Applicability: Honeywell IC–600 integrated avionics computers having part numbers 7017000–82401, –82402, –82403, –83401, –83402, and –83403, as installed in, but not limited to, EMBRAER Model EMB–145 series airplanes.

Note 1: This AD applies to Honeywell IC–600 integrated avionics computers having part numbers 7017000–82401, –82402, –82403, –83401, –83402, and –83403; as installed in any airplane, regardless of whether the airplane has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)

of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a ''random reset'' condition of the electronic flight instrument system, which could affect the pilot's ability to control the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the IC–600 integrated avionics computer, in accordance with Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998.

(b) As of the effective date of this AD, no person shall install a Honeywell IC–600 integrated avionics computer having part number 7017000–82401, –82402, –82403, –83401, –83402, or –83403 on any airplane; unless it has been modified in accordance with Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(e) The modification shall be done in accordance with Honeywell Service Bulletin 7017000–22–43, dated March 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Inc., Business and Commuter Aviation Systems, Box 29000, Phoenix, Arizona 85038. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–48 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–238–AD; Amendment 39–10981; AD 99–01–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires installation of a placard that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. This amendment also requires installation of an isolation valve in the drain line downstream of the selector valve, which would terminate the requirement for the placard installation. This amendment is prompted by reports of damage to the horizontal stabilizer, and engine flameout caused by ice formed from water drained inadvertently through a mispositioned selector valve. The actions specified by this AD are intended to prevent damage to the engines, airframe, or horizontal stabilizer, and/or to prevent a hazard to persons or property on the ground, as a result of ice that could dislodge from the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the Federal Register on November 13, 1997 (62 FR 60810). That action proposed to require installation of a placard that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. That action also proposed to require installation of an isolation valve in the drain line downstream of the selector valve.

Consideration of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Delay Issuance of AD Pending Release of Service Information

Several commenters request delay of the issuance of the AD pending the release of appropriate service information that provides technical details for installation of the isolation valve. The commenters state that, without such service information, they are unable to provide meaningful comments regarding the technical content of the proposed AD.

The FAA partially concurs with the commenter's request. The FAA recognizes that a service bulletin would provide technical details and procedures for accomplishing the actions proposed by the notice of proposed rulemaking (NPRM). However, the issue subject to public comment was the general requirement for the placard and valve installations. Further, because the valve installation is not expected to be technically complicated or difficult to accomplish, the FAA does not anticipate receiving any comments addressing the technical aspects of the valve installation. In light of this information, the FAA has determined that it is unnecessary to delay issuance of the final rule.

Request To Revise Applicability

One commenter states its understanding of the applicability as

being limited to those models on which forward lavatories are installed.

The FAA infers that the commenter is requesting that the FAA revise the applicability to include that limitation. The FAA concurs with the commenter's request, having determined that an affected airplane without a forward lavatory installed would not be subject to the identified unsafe condition. The applicability of the final rule has been revised accordingly.

Request To Consider Valve Installation as Terminating Action

One commenter requests that the proposed AD be revised to require installation initially of either the placard or the valve. That commenter considers the valve installation as the primary solution to address the identified unsafe condition; therefore, valve installation (if accomplished within the compliance time required for the placard installation) would preclude the need for the placard installation. That commenter suggests some airlines may choose to incorporate the valves within the 6-month window and forgo the placard installation. As further justification for its request, the commenter adds that production airplanes now include the isolation valve but not the placard.

The FAA concurs with the request to require installation initially of either the placard or the valve. The FAA's intent behind installation of a placard, as proposed by the NPRM, was to provide an expeditious means to achieve an acceptable level of safety pending installation of the isolation valve. However, the FAA agrees that the isolation valve is considered the primary design solution to the identified unsafe condition. Therefore, the placard would not be needed if the valve is installed within the 6-month compliance time required to install the placard. The final rule has been revised to specify this, and to indicate that installation of the valve terminates the requirement for installation of the placard.

Request To Remove Requirement for Valve Installation

One commenter reports that it has not experienced the problem addressed in the proposed AD. The commenter states that the proposed requirement to install an isolation valve in the drain line is unnecessary, and installation of a placard should be sufficient to address the unsafe condition.

The FAA infers that the commenter is requesting removal of the requirement to install the valve. The FAA does not concur. The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by reliance on the cabin crew following additional procedures. This determination, coupled with a better understanding of the human factors associated with following such procedures, has led the FAA to consider placing less emphasis on the use of informational placards and more emphasis on design improvements. The valve installation requirement is in consonance with these conditions. No change to the final rule in this regard is necessary.

Concern Regarding AD Effectiveness

One commenter generally supports the proposal, but urges the FAA to continue to monitor occurrences of airframe damage and engine flameout due to inadvertent or erroneous drain valve activation in flight. The commenter states that the proposed corrective action would reduce but not eliminate the possibility of this unsafe condition, and urges the FAA to determine if a more active means of preventing the unsafe condition would be appropriate.

The FAA acknowledges the commenter's concern and will continue to monitor such occurrences of airframe damage and engine flameout. The FAA may consider further rulemaking activity if additional corrective actions are deemed necessary.

Actions Since Issuance of NPRM

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 737–38–1043, dated January 8, 1998, which provides procedures for the installation of the placard. Paragraph (a) of the final rule has been revised to incorporate the service bulletin as the appropriate source of service information for the placard installation. In addition, Figure 1 of the NPRM (which depicts the placard) has been removed from the final rule because an appropriate figure is provided in the service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,830 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,037 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this installation required by this AD on U.S. operators is estimated to be $62,220, or $60 per airplane.

It will take approximately 6 work hours per airplane to accomplish the required installation of an isolation valve, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of this installation required by this AD on U.S. operators is estimated to be $684,420, or $660 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this section (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtain from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–16 Boeing: Amendment 39–10981. Docket 97–NM–238–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; having forward lavatories installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the engines, airframe, or horizontal stabilizer, and/or to prevent a hazard to persons or property on the ground, accomplish the following:

(a) Except as provided by paragraph (c) of this AD: Within 6 months after the effective date of this AD, install a placard on the door beneath the forward lavatory sink, that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. The installation shall be accomplished in accordance with Boeing Service Bulletin 737–38–1043, dated January 8, 1998.

(b) Within 36 months after the effective date of this AD, install an isolation valve in the drain line downstream of the selector valve for the forward lavatory water supply, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Once the valve is installed, the placard described in paragraph (a) of this AD may be removed.

(c) For airplanes on which the valve installation required by paragraph (b) of this AD is accomplished within the compliance time specified in paragraph (a) of this AD, the placard installation required by paragraph (a) is not required.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(f) The placard installation shall be done in accordance with Boeing Service Bulletin 737–38–1043, dated January 8, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–185 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–357–AD; Amendment 39–10987; AD 99–01–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal (Rules Docket No. 98-NM–08-AD) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18164). That action proposed to require repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Issue Separate Rulemaking Actions

Two commenters support the intent of the proposed AD, but request that the FAA issue separate rulemaking actions for each inspection service bulletin referenced in the proposed AD and its associated modification service bulletin. One commenter states that it is concerned with the combination of three unrelated service bulletins being mandated by a single rulemaking action. The commenter states that, as the proposed AD is currently written, operators could erroneously determine the applicability and compliance times

of the proposed AD. The commenter points out that the effectivity listing, repetitive inspection intervals, and affected areas are different in each of these service bulletins.

The FAA concurs with the commenters' request to issue separate rulemaking actions. The FAA has determined to separate the required actions as follows:

1. Rules Docket 98–NM–08–AD will address the actions associated with Airbus Service Bulletin A320–53–1034 and Airbus Service Bulletin A320–53–1033.

2. Rules Docket 98–NM–356–AD will address the actions associated with Airbus Service Bulletin A320–53–1057 and Airbus Service Bulletin A320–53–1056.

3. Rules Docket 98–NM–357–AD will address the actions associated with Airbus Service Bulletin A320–53–1032 and Airbus Service Bulletin A320–53–1031.

Because the public has already been given notice of the subject requirements in Rules Docket No. 98–NM–08–AD, the FAA has determined that there is no need to issue notices of proposed rulemaking (NPRM) for Rules Docket No.'s 98–NM–356–AD and 98–NM–357–AD. These two new rulemaking actions will be issued as final rules.

Request To Cite the Manufacturer's Serial Numbers in the Applicability Statement

One commenter suggests that the FAA revise the applicability statement of the proposed AD to include the manufacturer's serial numbers (MSN) of the affected airplanes. Without the MSN's listed in the applicability, the commenter contends that operators, leasing groups, or other non-technical groups have difficulty evaluating any pending or applicable rulings against a specific aircraft serial number. The commenter states that such a revision would clearly identify the affected airplanes and would avoid any questions regarding the applicability of the rule.

The FAA concurs partially with the commenter's request to include the MSN's. The FAA finds that listing the MSN's in the applicability statement of AD's may not be appropriate in all cases. In certain cases where a terminating modification is available, the applicability of an AD may be more accurately determined if operators check their maintenance records to verify if that particular modification has been accomplished. Such a check will better ensure that all airplanes subject to the identified unsafe condition of an AD have been correctly identified by operators. However, as discussed previously, the FAA has decided to issue three separate rulemaking actions. As a result, the FAA has revised the applicability statement of each of these final rules to accurately reflect what is specified in the appropriate French airworthiness directive, which in one case (Rules Docket No. 98–NM–356–AD) necessitates listing MSN's.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD.

It will take approximately 19 work hours per airplane to accomplish the required visual inspection on the outboard flanges, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD on U.S. operators is estimated to be $35,340, or $1,140 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in Airbus Service Bulletin A320–53–1031 that is provided by this AD action, it would take approximately 1 work hour (excluding access and closeup) per fastener hole to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $4,047 (for one modification kit). Based on these figures, the cost impact of that optional terminating action would be a minimum of $4,107 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–19 Airbus Industrie: Amendment 39–10987. Docket 98–NM–357–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21346 (reference Airbus Service Bulletin A320–53–1031, dated December 9, 1994) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Prior to the accumulation of 30,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracking on the outboard flanges around the fastener holes of frames 38 to 41, between stringers 12 and 21, in accordance with Airbus Service Bulletin A320–53–1032, Revision 1, dated January 15, 1998. Thereafter, repeat the visual inspection at intervals not to exceed 6,000 flight cycles. If any crack is found, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of a repair in accordance with the service bulletin terminates the repetitive inspection requirements for the area repaired.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Accomplishment of Airbus Modification 21346 in accordance with Airbus Service Bulletin A320–53–1031, dated December 9, 1994, prior to the accumulation of 20,000 total flight cycles constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) Except as provided by paragraph (b) of this AD, the inspections and repairs shall be done in accordance with Airbus Service Bulletin A320–53–1032, Revision 1, dated January 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–313–107(B), dated October 22, 1997.

(g) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–182 Filed 1–7–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–356–AD; Amendment 39–10986; AD 99–01–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal (Rules Docket No. 98–NM–08–AD) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18164). That action proposed to require repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Issue Separate Rulemaking Actions

Two commenters support the intent of the proposed AD, but request that the FAA issue separate rulemaking actions for each inspection service bulletin referenced in the proposed AD and its associated modification service bulletin. One commenter states that it is concerned with the combination of three unrelated service bulletins being mandated by a single rulemaking action. The commenter states that, as the proposed AD is currently written, operators could erroneously determine the applicability and compliance times of the proposed AD. The commenter points out that the effectivity listing, repetitive inspection intervals, and affected areas are different in each of these service bulletins.

The FAA concurs with the commenters' request to issue separate rulemaking actions. The FAA has determined to separate the required actions as follows:

1. Rules Docket 98–NM–08–AD will address the actions associated with Airbus Service Bulletin A320–53–1034 and Airbus Service Bulletin A320–53–1033.

2. Rules Docket 98–NM–356–AD will address the actions associated with Airbus Service Bulletin A320–53–1057 and Airbus Service Bulletin A320–53–1056.

3. Rules Docket 98–NM–357–AD will address the actions associated with Airbus Service Bulletin A320–53–1032 and Airbus Service Bulletin A320–53–1031.

Because the public has already been given notice of the subject requirements

in Rules Docket No. 98–NM–08–AD, the FAA has determined that there is no need to issue notices of proposed rulemaking (NPRM) for Rules Docket No.'s 98–NM–356–AD and 98–NM–357–AD. These two new rulemaking actions will be issued as final rules.

Request To Cite the Manufacturer's Serial Numbers in the Applicability Statement

One commenter suggests that the FAA revise the applicability statement of the proposed AD to include the manufacturer's serial numbers (MSN) of the affected airplanes. Without the MSN's listed in the applicability, the commenter contends that operators, leasing groups, or other non-technical groups have difficulty evaluating any pending or applicable rulings against a specific aircraft serial number. The commenter states that such a revision would clearly identify the affected airplanes and would avoid any questions regarding the applicability of the rule.

The FAA concurs partially with the commenter's request to include the MSN's. The FAA finds that listing the MSN's in the applicability statement of AD's may not be appropriate in all cases. In certain cases where a terminating modification is available, the applicability of an AD may be more accurately determined if operators check their maintenance records to verify if that particular modification has been accomplished. Such a check will better ensure that all airplanes subject to the identified unsafe condition of an AD have been correctly identified by operators. However, as discussed previously, the FAA has decided to issue three separate rulemaking actions. As a result, the FAA has revised the applicability statement of each of these final rules to accurately reflect what is specified in the appropriate French airworthiness directive, which in one case (Rules Docket No. 98–NM–356–AD) necessitates listing MSN's.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD.

It will take approximately 15 work hours per airplane to accomplish either the visual or eddy current inspection of the longitudinal lap joints, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections required by this AD on U.S. operators is estimated to be $5,400, or $900 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in Airbus Service Bulletin A320–53–1056 that is be provided by this AD action, it would take approximately 258 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $420 per airplane. Based on these figures, the cost impact of that optional terminating action would be $15,900 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–18 Airbus Industrie: Amendment 39–10986. Docket 98–NM–356–AD.

Applicability: Model A320 series airplanes, having manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 039 inclusive, 041 through 052 inclusive, 054, 056, and 057; on which Airbus Modification 21905 (reference Airbus Service Bulletin A320–53–1056, Revision 02, dated February 16, 1998) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a visual or eddy current inspection to detect cracking in the upper rivet row of the longitudinal lap joint, in accordance with Airbus Service Bulletin A320–53–1057, Revision 2, dated July 5, 1996.

(1) Thereafter, repeat the inspection at one of the following intervals:

(i) If the immediately preceding inspection was conducted using visual techniques, conduct the next inspection within 4,000 flight cycles.

(ii) If the immediately preceding inspection was conducted using eddy current techniques, conduct the next inspection within 12,000 flight cycles.

(2) If any crack is found, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of a repair in accordance with the service bulletin

terminates the repetitive inspection requirements for the area repaired.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Accomplishment of Airbus Modification 21905 in accordance with Airbus Service Bulletin A320–53–1056, Revision 02, dated February 16, 1998, prior to the accumulation of 20,000 total flight cycles constitutes terminating action for the repetitive inspection requirements specified in paragraph (a)(1)(i) and (a)(1)(ii) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) Except as provided by paragraph (b) of this AD, the inspections and repairs shall be done in accordance with Airbus Service Bulletin A320–53–1057, Revision 2, dated July 5, 1996, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–4	2	July 5, 1996.
2, 8	1	June 28, 1995.
5–7, 9–17	Original	December 9, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–312–106(B), dated October 22, 1997.

(g) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–181 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–08–AD; Amendment 39–10985; AD 99–01–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective February 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18164). That action proposed to require repetitive inspections to detect fatigue cracking in certain areas of the fuselage; and corrective action, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Issue Separate Rulemaking Actions

Two commenters support the intent of the proposed AD, but request that the FAA issue separate rulemaking actions for each inspection service bulletin referenced in the proposed AD and its associated modification service bulletin. One commenter states that it is concerned with the combination of three unrelated service bulletins being mandated by a single rulemaking action. The commenter states that, as the proposed AD is currently written, operators could erroneously determine the applicability and compliance times of the proposed AD. The commenter points out that the effectivity listing, repetitive inspection intervals, and affected areas are different in each of these service bulletins.

The FAA concurs with the commenters' request to issue separate rulemaking actions. The FAA has determined to separate the required actions as follows:

1. Rules Docket 98–NM–08–AD will address the actions associated with Airbus Service Bulletin A320–53–1034 and Airbus Service Bulletin A320–53–1033.

2. Rules Docket 98–NM–356–AD will address the actions associated with Airbus Service Bulletin A320–53–1057

and Airbus Service Bulletin A320–53–1056.

3. Rules Docket 98–NM–357–AD will address the actions associated with Airbus Service Bulletin A320–53–1032 and Airbus Service Bulletin A320–53–1031.

Because the public has already been given notice of the subject ments in Rules Docket No. 98–NM–08–AD, the FAA has determined that there is no need to issue notices of propose rulemaking (NPRM) for Rules Docket No.'s 98–NM–356–AD and 98–NM–357–AD. These two new rulemaking actions will be issued as final rules.

Request To Cite the Manufacturer's Serial Numbers in the Applicability Statement

One commenter suggests that the FAA revise the applicability statement of the proposed AD to include the manufacturer's serial numbers (MSN) of the affected airplanes. Without the MSN's listed in the applicability, the commenter contends that operators, leasing groups, or other non-technical groups have difficulty evaluating any pending or applicable rulings against a specific aircraft serial number. The commenter states that such a revision would clearly identify the affected airplanes and would avoid any questions regarding the applicability of the rule.

The FAA concurs partially with the commenter's request to include the MSN's. The FAA finds that listing the MSN's in the applicability statement of AD's may not be appropriate in all cases. In certain cases where a terminating modification is available, the applicability of an AD may be more accurately determined if operators check their maintenance records to verify if that particular modification has been accomplished. Such a check will better ensure that all airplanes subject to the identified unsafe condition of an AD have been correctly identified by operators. However, as discussed previously, the FAA has decided to issue three separate rulemaking actions. As a result, the FAA has revised the applicability statement of each of these final rules to accurately reflect what is specified in the appropriate French airworthiness directive, which in one case (Rules Docket No. 98–NM–356–AD) necessitates listing MSN's.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish the required ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the ultrasonic inspection required by this AD on U.S. operators is estimated to be $8,640, or $360 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action specified in Airbus Service Bulletin A320–53–1033 that is provided by this AD action, it would take approximately 5 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $72 per airplane. Based on these figures, the cost impact of that optional terminating action would be $372 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–01–17 Airbus Industrie: Amendment 39–10985. Docket 98–NM–08–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21202 (reference Airbus Service Bulletin A320–53–1033, Revision 3, dated July 4, 1994) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 30,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracking in the bottom panels of the keel beam (both left and right), in the area of the frame 46 and stringer 37 intersection at the pressure bulkhead, in accordance with Airbus Service Bulletin A320–53–1034, dated March 30, 1992. Thereafter, repeat the ultrasonic inspection at intervals not to exceed 6,000 flight cycles. If any crack is found, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (b) of this AD.

(b) If any crack is found during any inspection required by paragraph (a) of this AD, and the service bulletin specifies to

contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Accomplishment of Airbus Modification 21202 in accordance with Airbus Service Bulletin A320–53–1033, Revision 3, dated July 4, 1994, constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) Except as provided by paragraph (b) of this AD, the inspections and repairs shall be done in accordance with Airbus Service Bulletin A320–53–1034, dated March 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–314–108(B), dated October 22, 1997.

(g) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on December 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–179 Filed 1–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 744 and 772

[Docket No. 981013256–8256–01]

RIN 0694–AB63

Revisions to the Export Administration Regulations; Exports and Reexports to Specially Designated Terrorists and Foreign Terrorist Organizations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the end-user and end-use control policy of the Export Administration Regulations (EAR) to impose new foreign policy controls on exports and certain reexports to persons identified as Specially Designated Terrorists or Foreign Terrorist Organizations and listed in the Appendices to 31 CFR Chapter V published by the Department of the Treasury, Office of Foreign Assets Control (OFAC). (The term ''person'' includes individuals as well as entities or other organizations.)

Specifically, this rule creates a new § 744.10 and § 744.11 that set forth the license requirements for exports and certain reexports of items subject to the EAR to these persons. To avoid duplication, the Bureau of Export Administration (BXA) will not require a separate license when the Office of Foreign Assets Control has authorized an export or reexport to a Specially Designated Terrorist.

DATES: *Effective Date:* This rule is effective January 8, 1999. *Comment Date:* Comments on this rule must be received on or before February 8, 1999.

ADDRESSES: Written comments (six copies) should be sent to Denis Kerner, Office of Export Enforcement, Bureau of Export Administration, Room 4616, 14th Street and Constitution Ave., N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482-0171.

SUPPLEMENTARY INFORMATION:

Background

This rule amends part 744 of the EAR by imposing new foreign policy controls on exports and certain reexports of items subject to the EAR to persons identified as Specially Designated Terrorists or Foreign Terrorist Organizations. Numerous persons have been determined pursuant to Executive Order 12947 of January 23, 1995 (3 CFR, 1995 Comp., p. 319, as amended by Executive Order 13099 of August 20, 1998 (63 FR 45167, August 25, 1998)) to be disrupting the Middle East Peace Process. These persons have been identified as Specially Designated Terrorists, are subject to OFAC's Terrorism Sanctions Regulations (31 CFR part 595) and are listed in Appendices to 31 CFR Chapter V followed by the bracketed suffix initials [SDT].

In addition, certain organizations have been designated by the Secretary of State as Foreign Terrorist Organizations pursuant to 8 U.S.C. 1189 and are listed in Appendices to 31 CFR Chapter V followed by the bracketed suffix initials [FTO] and identified by State and Treasury Department notices. Funds of these organizations are subject to blocking pursuant to OFACs Foreign Terrorist Organizations Sanctions Regulations (31 CFR part 597). Criminal sanctions may also be imposed against any person subject to the jurisdiction of the United States who provides material support or resources to an FTO pursuant to 18 U.S.C. 2339. BXA is revising the EAR to further U.S. counterterrorism objectives. This rule revises part 744 of the Export Administration Regulations (EAR) by describing the license requirements for exports and certain reexports to SDTs and FTOs of items subject to the EAR.

(a) For SDTs, a license is required for:

(1) All exports and reexports by a U.S. person of any item subject to the EAR; and

(2) All exports and reexports by any person of any item subject to the EAR on the Commerce Control List (CCL).

To avoid duplication, exporters are not required to seek separate authorizations from BXA and from OFAC for an export or reexport subject both to the EAR and to OFAC's Terrorism Sanctions Regulations. OFAC regulations apply to transactions by U.S. persons with SDTs. Therefore, if OFAC authorizes a transaction involving an export or reexport by a U.S. person to a designated SDT, no separate authorization from BXA is necessary. An authorization issued by OFAC constitutes authorization under the EAR. Transactions not covered under OFAC regulations (*e.g.*, reexports by non-U.S. persons to SDTs of items subject to the EAR on the CCL) will require a license from BXA under this rule.

(b) For FTOs, a license is required for:

(1) All exports and reexports by a U.S. person of any item subject to the EAR; and

(2) All exports and reexports by any person of any item subject to the EAR on the CCL.

Exporters are required to seek authorization from BXA for exports and certain reexports to FTOs. Applications for exports and reexports of all items to FTOs identified by paragraphs (1) and (2) above will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Under a policy of conforming actions under the Executive Order to those under the EAA, insofar as appropriate, the Department of Commerce notified the Congress of this imposition of foreign policy controls on December 15, 1998.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor may be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close February 8, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–2593.

List of Subjects

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports, Foreign trade.

Accordingly, parts 744 and 772 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121).

2. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

3. A new § 744.13 is added to read as follows:

§ 744.13 Restrictions on exports and certain reexports to specially designated terrorists.

Consistent with the purpose of Executive Order 12947 of January 23, 1995, BXA maintains restrictions on exports and certain reexports to Specially Designated Terrorists. Executive Order 12947 prohibits transactions by U.S. persons with terrorists who threaten to disrupt the Middle East peace process. Pursuant to the Executive Order, the Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains 31 CFR part 595, the Terrorism Sanctions Regulations. In the Appendices to 31 CFR Chapter V, pursuant to 31 CFR part 595, these Specially Designated Terrorists are identified by the bracketed suffix initials [SDT]. The requirements set forth below further the objectives of Executive Order 12947.

(a) *License requirement(s).* (1) All exports and reexports to an SDT by a U.S. person of any item subject to the EAR; and

(2) A license requirement applies to all exports and reexports to an SDT of any item subject to the EAR on the Commerce Control List (CCL).

(3) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport subject both to the EAR and to OFAC's Terrorism Sanctions Regulations. Therefore, if OFAC authorizes an export or reexport by a U.S. person to a SDT, no separate authorization from BXA is necessary.

(4) Any export or reexport by a U.S. person of any item subject to both the EAR and OFAC's Terrorism Sanctions Regulations and not authorized by OFAC is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person of items requiring a license pursuant to this section and not authorized by BXA is a violation of the EAR.

(5) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BXA authorization for items described by paragraph (a) of this section are available for exports or reexports to SDTs.

(c) *Licensing policy.* Applications for licenses required by paragraph (a) of this section generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

4. A new section 744.14 is added to read as follows:

§ 744.14 Restrictions on exports and certain reexports to designated foreign terrorist organizations.

Consistent with the objectives of sections 302 and 303 of the Anti-Terrorism and Effective Death Penalty Act (Anti-Terrorism Act) (Pub.L. 104–132, 110 Stat. 1214–1319), BXA maintains restrictions on exports and certain reexports to designated Foreign Terrorist Organizations. The Secretary of State has designated certain designated Foreign Terrorist Organizations pursuant to section 302 of the Anti-Terrorism Act. Also pursuant to section 302 of the Anti-Terrorism Act, the Department of the Treasury, Office of Foreign Assets Control, maintains 31 CFR part 597, the Foreign Terrorist Organizations Sanctions Regulations, requiring U.S. financial institutions to block all financial transactions involving assets of designated Foreign Terrorist Organizations within the possession or control of such U.S. financial institutions. Section 303 of the Anti-Terrorism Act prohibits persons within the United States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated Foreign Terrorist Organization and makes violations punishable by criminal penalties under title 18, United States Code. These designated Foreign Terrorist Organizations are listed in the Appendices to 31 CFR Chapter V and identified by the bracketed suffix initials [FTO]. The export control requirements set forth below further the objectives of the Anti-Terrorism Act.

(a) *License requirement(s).* A license requirement applies to:

(1) All exports and reexports to an FTO of any item subject to the EAR on the Commerce Control List (CCL); and

(2) All exports and reexports to an FTO by a U.S. person of any item subject to the EAR.

(3) Any export or reexport by a U.S. person prohibited by the EAR and not authorized by BXA is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person of items requiring a license pursuant to this section and not authorized by BXA is a violation of the EAR.

(4) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BXA authorization for items described by paragraph (a) of this section are available for exports or reexports to FTOs.

(c) *Licensing policy.* Applications for exports and reexports to FTOs of all items identified by paragraphs (a)(1) and (a)(2) of this section will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

Note to § 744.14. This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

PART 772—[AMENDED]

5. Part 772 is amended:

a. By adding a definition for foreign terrorist organization;

b. By revising the heading for the definition of Specially Designated Terrorist; and

c. By revising the introductory text of paragraph (a) for the definition of ''U.S. person'' to read as follows:

PART 772—DEFINITIONS OF TERMS

* * * * *

Foreign Terrorist Organizations (FTO). Any organization that is determined by the Secretary of the Treasury to be a foreign terrorist organization under notices or regulations issued by the Office of Foreign Assets Control (see 31 CFR chapter V).

* * * * *

Specially Designated Terrorist (SDT).

* * *

* * * * *

U.S. person. (a) For purposes of §§ 744.6, 744.10, and 744.11 of the EAR, the term U.S. person includes:

* * * * *

Dated: December 29, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–334 Filed 1–7–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

[T.D. 99–4]

RIN 1515–AC33

Mandatory Seizure of Certain Plastic Explosives

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding the types of merchandise that are required to be seized and forfeited if introduced or attempted to be introduced into the United States contrary to law. The Customs Regulations reflect the statutory list of such merchandise set forth in 19 U.S.C. 1595a(c)(1). That statute was amended to add plastic explosives not containing a detection agent to the list of merchandise required to be seized and forfeited. This document conforms the Customs Regulations to that statutory change.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Todd J. Schneider, Penalties Branch, 202-927–1694.

SUPPLEMENTARY INFORMATION:

Background

Section 596(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)(1)) sets forth a list of merchandise which, if introduced or attempted to be introduced into the United States contrary to law, are required to be seized and forfeited.

Section 162.23(a), Customs Regulations (19 CFR 162.23(a)), reflects the list of merchandise that must be mandatorily seized if introduced or attempted to be introduced into the United States contrary to law as set forth in 19 U.S.C. 1595a(c).

Title VI, section 606 of Pub. L. 104–132, the ''Antiterrorism and Effective Death Penalty Act of 1996,'' amended 19 U.S.C. 1595a(c)(1), effective April 24, 1997, to add to the list of merchandise required to be seized, merchandise that ''is a plastic explosive, as defined in section 841(q) of Title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of such title.'' This amendment was made to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, which the United States entered into at Montreal, Canada, in 1991.

This document amends § 162.23(a), Customs Regulations, to reflect that amendment to 19 U.S.C. 1595a(c)(1).

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements

Inasmuch as this amendment merely conforms the Customs Regulations to existing law, pursuant to 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with notice and public procedure for this amendment as they are unnecessary. For the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This document does not meet the criteria for a significant regulatory action under Executive Order 12866.

Drafting Information: The principal author of this document was Janet Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 162

Customs duties and inspection, Imports, Inspection, Law enforcement, Prohibited merchandise, Restricted merchandise, Seizures and forfeitures.

Amendment to the Regulations

For the reasons set forth in the preamble, part 162 of the Customs Regulations (19 CFR part 162) is amended as set forth below.

PART 162—INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for part 162 and the specific authority citation for § 162.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.23 also issued under 19 U.S.C. 1595a(c).

* * * * *

2. Section 162.23(a) is amended by removing the word ''or'' at the end of paragraph (a)(2); by removing the period at the end of paragraph (a)(3) and adding ''; or'' in its place; and by adding a new paragraph (a)(4) to read as follows:

§ 162.23 Seizure under section 596(c) Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).

(a) *Mandatory seizures.* * * *

* * * * *

(4) A plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of that title.

* * * * *

Approved: December 1, 1998.

Raymond W. Kelly,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–376 Filed 1–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862 and 892

[Docket Nos. 98P–0506 and 98P–0621]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting petitions requesting exemption from the premarket notification requirements for certain class II devices. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

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 (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Pub. L. 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 which 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 (Pub. L. 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), 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 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 World Wide Web 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. Petitions

FDA has received the following petitions requesting an exemption from premarket notification for class II devices:

1. Abbott Laboratories, 21 CFR 862.1715, triiodothyronin uptake test system devices.

2. Radiological Imaging Technology, 21 CFR 892.5050, film dosimetry system, a.k.a. film scanning system.

In the **Federal Register** of September 30, 1998 (63 FR 52275), FDA published a notice announcing that these petitions had been received and providing an opportunity for interested persons to submit comments on the petitions by October 30, 1998. FDA received no comments. FDA has reviewed these petitions and has determined that these devices meet the criteria for exemption described previously and is, therefore, issuing this order exempting these devices from the requirements of premarket notification and is codifying this order in the Code of Federal Regulations (CFR). The film dosimetry system is an accessory to the medical charged-particle radiation therapy system classified in 21 CFR 892.5050. The exemption for the film dosimetry system is limited only to film dosimetry systems intended for use as a quality control system. (See 21 CFR 892.9 for further information on limitations on exemptions for radiological devices.)

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 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 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.

If a rule has a significant economic impact on a substantial number of small entities, 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.

List of Subjects

21 CFR Part 862

Medical devices.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 862 and 892 are amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

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

2. Section 862.1715 is amended by revising paragraph (b) to read as follows:

§ 862.1715 Triiodothyronine uptake test system.

* * * * *

(b) *Classification*. Class II. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

PART 892—RADIOLOGY DEVICES

3. The authority citation for 21 CFR part 892 continues to read as follows:

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

4. Section 892.5050 is amended by revising paragraph (b) to read as follows:

§ 892.5050 Medical charged-particle radiation therapy system.

* * * * *

(b) *Classification*. Class II. When intended for use as a quality control system, the film dosimetry system (film scanning system) included as an accessory to the device described in paragraph (a) of this section, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

Dated: December 22, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–380 Filed 1–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8806]

RIN 1545–AV94

Employee Stock Ownership Plans; Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing for changes to the rules regarding qualified retirement plan benefits that are protected from reduction by plan amendment, that have been made necessary by the Taxpayer Relief Act of 1997 (TRA '97). The final regulations change the existing final regulations to conform with the TRA '97 rules regarding in-kind distribution requirements for certain employee stock ownership plans, and specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating the prohibition against plan amendments that reduce accrued benefits. These final regulations affect sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants. The amendments to the temporary regulations remove previously issued temporary regulations on the same subject.

DATES: These regulations are effective January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(d)(6). These regulations change the rules under section 411(d)(6) regarding qualified retirement plan benefits that are protected from reduction by plan amendment, to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105–34, 111 Stat. 788 (1997). On September 4, 1998, temporary regulations (TD 8781) under section 411(d)(6) were published in the **Federal Register** (63 FR 47172). A notice of proposed rulemaking (REG–101363–98), cross-referencing the temporary regulations, was published in the **Federal Register** (63 FR 47214) on the same day. The temporary regulations conform the regulations to the TRA '97 amendments to section 409 regarding the general requirement that employee stock ownership plans offer distributions in the form of employer securities. In addition, the temporary regulations specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating section 411(d)(6).

One written comment responding to the notice of proposed rulemaking was received. No public hearing was requested or held. The proposed regulations under section 411(d)(6) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

Section 411(d)(6) provides that a plan is not treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Under section 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. Sections 1.411(d)–4, Q&A–1(b)(1) and 1.401(a)(4)–4(e) specify that different optional forms of benefit within the meaning of section 411(d)(6)(B) result from differences in the medium of a distribution (e.g., cash or in-kind) from a plan. Section 411(d)(6)(C) provides that any tax credit employee stock ownership plan or any employee stock ownership plan is not treated as failing to meet the requirements of section 411(d)(6) merely because it modifies distribution options in a nondiscriminatory manner.

Special Rules Regarding Medium of Distribution From ESOPs

Section 409(h) contains requirements relating to distributions from tax credit employee stock ownership plans. Section 4975(e)(7) extends the requirements of section 409(h) to other employee stock ownership plans as well, and section 401(a)(23) extends the requirements of section 409(h) to qualified plans that are stock bonus plans. Under section 409(h)(1)(A), an employee stock ownership plan or other stock bonus plan generally is required to make distributions available in the form of employer securities. Prior to its amendment by TRA '97, section 409(h)(2) provided an exception to this rule in the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a).

Under section 1361, certain small business corporations that do not have more than 75 shareholders are eligible to elect treatment as S corporations whose tax attributes generally flow through to shareholders in accordance with the rules of subchapter S of chapter 1 of subtitle A of the Internal Revenue Code. Prior to the Small Business Job Protection Act of 1996 (SBJPA), Public Law 104–188, 110 Stat. 1755 (1996), an S corporation could not maintain an employee stock ownership plan because an S corporation could not have a qualified trust described in section 401(a) as a shareholder. SBJPA amended the requirements for S corporations, effective for tax years beginning after December 31, 1996, to permit certain tax-exempt organizations, including qualified trusts described in section 401(a), to be S corporation shareholders.

TRA '97 made an additional change to the rules governing qualified plans holding securities of an S corporation employer, to make it easier for S corporation employers to facilitate employee ownership of employer securities through qualified plans. Section 1506 of TRA '97 extends the exception of section 409(h)(2) to cover S corporations, effective for taxable years beginning after December 31, 1997. Pursuant to this change, tax credit employee stock ownership plans, employee stock ownership plans, and other stock bonus plans established and maintained by S corporation employers are not required to offer distributions in the form of employer securities.

Section 1.411(d)–4, Q&A–2(d)(2)(ii) provides an exception from the requirements of section 411(d)(6) for plan amendments that eliminate optional forms of benefit from a tax credit employee stock ownership plan, an employee stock ownership plan, or a stock bonus plan, for certain employers. Section 1.411(d)–4, Q&A–2(d)(2)(ii) applies to employers that become substantially employee-owned, if the employer otherwise meets the requirements of section 409(h)(2) with respect to restrictions on the ownership of outstanding employer stock. These regulations retain the provision in the temporary regulations to expand the exception of § 1.411(d)–4, Q&A–2(d)(2)(ii) from the requirements of section 411(d)(6) to apply to S corporations as well, to reflect the TRA '97 changes to section 409(h).

Rules for Plan Amendments Pursuant to TRA '97

Section 1541 of TRA '97 contains provisions relating to plan amendments that are adopted as a result of TRA '97. If section 1541 applies to a plan amendment, section 1541(a) provides that the plan will be treated as operated in accordance with its terms and will not fail to satisfy the requirements of section 411(d)(6) by reason of the amendment. Section 1541 applies to a plan amendment that is made pursuant to a legislative change in the pension and employee benefit provisions of TRA '97, provided the following conditions are satisfied. First, the plan amendment must be adopted before the first day of the first plan year beginning on or after January 1, 1999 (2001, in the case of a governmental plan, as defined in section 414(d)). Second, the plan must be operated in accordance with the terms of the plan amendment, beginning on the date the legislative change takes effect, or, if the amendment is not required by the legislative change, the effective date of the amendment specified by the plan. Third, the plan amendment must be made retroactively effective.

The remedial amendment period for adopting plan amendments to which section 1541 of TRA '97 applies was extended pursuant to the rules of section 401(b) in Rev. Proc. 98–14 (1998–4 I.R.B. 22). To provide a uniform time for plan amendment, these regulations add a new § 1.411(d)–4, Q&A–11 to retain the rule of § 1.411(d)–4T, Q&A–11 of the temporary regulations extending the time for the section 411(d)(6) relief provided by section 1541 of TRA '97 to the end of the remedial amendment period for these plan amendments.

The sole commentator raised a concern regarding whether this extension of the time period for section 411(d)(6) relief originally provided under section 1541 of TRA '97 restricts the time during which any plan amendment can be made to eliminate in-kind distributions of employer securities from employee stock ownership plans of S corporations. The extension of the time period for this section 1541 statutory relief pursuant to § 1.411(d)–4, Q&A–11 does not restrict the time period during which a plan amendment can be made to eliminate these in-kind distributions as permitted under § 1.411(d)–4, Q&A–2(d)(2)(ii); to the contrary, the § 1.411(d)–4, Q&A–11 extension of this statutory relief period provides an additional time period for the adoption of certain plan amendments to eliminate these in-kind distributions after these in-kind distributions have been eliminated in operation. Under the ongoing rule of § 1.411(d)–4, Q&A–2(d)(2)(ii), a plan amendment to eliminate these in-kind distributions that is effective with respect to distributions payable after the date the amendment is adopted can be made at any time during taxable years of the employer beginning after December 31, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–4T also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(d)–4 is amended by:

1. Revising Q&A–2(d)(2)(ii).
2. Removing the last sentence of Q&A–2(d)(3).
3. Adding Q&A–11.

The additions and revisions read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2: * * *

A–2: * * *

(d) * * *

(2) * * *

(ii) *Employer becomes substantially employee-owned or is an S corporation.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits subject to section 409(h) in the circumstances described in paragraph (d)(1)(ii)(A) or (B) of this Q&A–2, but only if the employer otherwise meets the requirements of section 409(h)(2)—

(A) The employer becomes substantially employee-owned; or

(B) For taxable years of the employer beginning after December 31, 1997, the employer is an S corporation as defined in section 1361.

* * * * *

Q–11: To what extent may a plan amendment that is made pursuant to the Taxpayer Relief Act of 1997 (TRA '97) (Public Law 105–34, 111 Stat. 788), reduce or eliminate section 411(d)(6) protected benefits?

A–11: A plan amendment does not violate the requirements of section 411(d)(6) merely because the plan amendment reduces or eliminates section 411(d)(6) protected benefits as of the effective date of the plan amendment, provided that—

(a) The plan amendment is made pursuant to an amendment made by title XV, or subtitle H of title X, of TRA '97; and

(b) The plan amendment is adopted no later than the last day of any

remedial amendment period that applies to the plan pursuant to §§ 1.401(b)–1 and 1.401(b)–1T for changes under TRA '97.

§ 1.411(d)–4T [Removed]

Par. 3. Section 1.411(d)–4T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 14, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–152 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–037–FOR, Amendment No. XXVI]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions of its revegetation document pertaining to prime farmland success standards, cover standards for woodlands, wetlands success standards, recreational land use success standards for tree and shrub stocking, and methods for sampling woodland cover. The amendment was intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and improve operational efficiency.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Field Office Director Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@OSMRE.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated April 9, 1998, North Dakota submitted a proposed amendment to its program (Amendment Number XXVI), administrative record No. ND–AA–05) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(aa) and (bb), and at its own initiative. The provisions of its revegetation policy document that North Dakota proposed to revise were: (1) II–C–1, II–C–3, II–C–4, II–C–5, and II–C–6 of the Cropland section to modify prime farmland provisions; (2) II–F–7 of the Woodland section; (3) II–H–9 and II–H–12 of the Wetlands section; (4) II–I–1 and II–I–2 of the Other Land Uses section; and (5) III–D–6 of the Measurements section.

OSM announced receipt of the proposed amendment in the May 8, 1998, **Federal Register** (63 FR 25428), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–AA–07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 8, 1998.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on April 9, 1998, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Section II–C, Standards for Evaluation of Revegetation Success (Prime Farmland Standards)

North Dakota proposed to revise Section II–C of ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments'' (hereinafter the revegetation policy document) to be consistent with its rules at NDAC 69–06.2–22–07 (3)(c) and (4)(d) and address a required program amendment at 30 CFR 934.16(aa).

North Dakota amended Section II–C to require that for third-stage bond release (equivalent to Phase II bond release under the Federal program) the prime farmland productivity standards must have been met for a minimum of three years. For at least two of the three years, spring wheat (the deepest rooting crop) must be used to demonstrate restoration of productivity. Barley or oats may be used for the other year. For fourth-stage bond release for prime farmlands (equivalent to phase III bond release under the Federal program), at least 10 years must have elapsed and the productivity standards for third-stage bond release must have been met.

The Federal regulations at 30 CFR 800.40(c)(2) require, in part, that no part of the bond or deposit shall be released under this paragraph until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16) of the Surface Mining and Reclamation Control Act and 30 CFR Part 823 of the Federal regulations. The Federal regulation at 30 CFR 823.15(b)(3) requires that the measurement period for determining average annual crop production on prime farmlands shall be a minimum of 3 crop years prior to release of the operator's performance bond.

OSM required, at 30 CFR 934.16(aa) of the Federal regulations, that North Dakota revise Chapter II, Section C of its revegetation policy document and its rules at NDAC 69–05.2–22–07(3)(c) and 69–05.2–2–26–05(3)(c) to require that, prior to third-stage bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years (62 FR 22889, 22892; April 28, 1997). OSM approved North Dakota's revisions to its rules as required by 30 CFR 934.16(aa).

The Director finds that proposed amendment to Section II–C of North Dakota's policy revegetation document parallels the approved revision to North Dakota's rules and is no less effective than the Federal regulations at 30 CFR 800.40(C)(2) and at 823.15(b)(3). The Director finds that North Dakota has, therefore, satisfied the required program amendment, approves the proposed revision, and removes the required amendment at 30 CFR 934.16(aa).

2. Section II–F, Standards for Evaluation of Revegetation Success (Cover Standards for Woodlands)

Existing Section II–F of North Dakota's revegetation policy document allows the use of herbaceous cover for evaluating the ground cover of woodland areas, a type of fish and wildlife habitat, at fourth-stage bond release. Herbaceous cover must be either

66% total basal cover (90% of the 73% standard) or 75% first-hit cover (90% of the 83% standard). Herbaceous cover, together with canopy cover must provide adequate protection from erosion.

North Dakota proposed to revise Section II–F to state that ground cover may be determined by sampling either total ground cover (a newly defined term), a combination of herbaceous and woody vegetation, or herbaceous understory only. Total ground cover (defined as live herbaceous cover, litter, and canopy from woody vegetation) must be at least 83%. North Dakota also revised the section to state that the herbaceous understory includes both herbaceous cover and litter. The revegetation policy document requires that total ground cover, including the canopy cover of woody vegetation, must provide adequate protection from erosion.

The Federal regulations at 30 CFR 701.5 define ground cover as the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. The Federal regulations at 30 CFR 816.116(b)(3)(iii) requires for fish and wildlife habitat, recreation, shelter belts, or forest products that vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

North Dakota's new definition of total ground cover is no less effective than the Federal definition of ground cover at 30 CFR 701.5. North Dakota's proposed addition of a total canopy standard of 83% is derived from the approved North Dakota cover standards in Section II–F of its guideline, which are 66% basal cover (90% of the 75% cover standard) or 75% first hit cover (90% of the 83% cover standard). In turn, these standards are based on research done in North Dakota to determine what level of cover is adequate to control erosion (study entitled, ''Pasture and Hayland; Measures of Reclamation Success;'' R.E. Ries and L. Hofmann, 1984). Because the standards were approved as sufficient to control erosion and meet the approved postmining land use, the proposed total cover standard of 83% will be adequate to control erosion and meet the postmining land use of woodlands, a type of fish and wildlife habitat. The Director finds that North Dakota's proposed revision to Section II–F of the revegetation policy document is no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and approves it.

3. Section II–H, Standards for Evaluation of Revegetation Success (Wetlands Success Standards)

For premining assessments of Class III wetlands, North Dakota's revegetation policy document requires that where only a few wetlands are involved, all should be sampled. In cases where a large number occur, approximately thirty percent may be randomly selected and sampled; however, in all cases, sample numbers must be approved by the Commission based on total number of wetlands and variability. In addition, for wetland surface water quality for Class III–VI wetlands, the revegetation policy document currently requires that premining data be collected for no less than three years.

For fourth-stage bond release of wetlands which are identified as fish and wildlife habitat, the revegetation policy document currently requires documentation that vegetation of the reclaimed wetland exhibits vegetation characteristics of the wetlands class for which it was designed. This documentation may be submitted annually to the Commission or at the time of bond release; however, it should be available to the Wetlands Advisory Committee on an annual basis if requested.

North Dakota proposed to revise Section 2–H of the revegetation policy document (concerning the premining wetland assessment) to require for Class III wetlands that wetlands sampled must be based on the number present, distribution and variability. Sample numbers must be approved by the Commission. For surface water quality assessments on Class III–VI wetlands, North Dakota's proposed revision requires that the number of years that data is collected must be approved by the Commission based on distribution and variability of wetlands.

For fourth-stage bond release of wetlands North Dakota also proposed to revise Section 2–H to require that data be collected the last three years of the liability period and submitted annually. Each year's data must include the same four parameters currently included in the policy document.

The Federal regulations at 30 CFR 779.19(a) require that the permit application, if required by the regulatory authority, contain a map delineating existing vegetative types and a description of the plant communities within the proposed permit area and any proposed reference area. The description shall include information adequate to predict the potential for reestablishing vegetation. There is no Federal regulation establishing the number of years for premining surface water quality.

The Federal regulations at 30 CFR 816.116(c)(3)(i) require that for fish and wildlife habitat, to achieve phase III bond release, the appropriate vegetation parameters shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

Because North Dakota's proposed revision at Section 2–H of its revegetation policy document requires delineation of premining wetlands vegetation, North Dakota's requirements for premining assessments of wetland areas are consistent with and no less effective than the Federal regulations at 30 CFR 779.19(a). Also, because North Dakota's proposed revision requires three years of vegetation data for fourth-stage bond release (equivalent to phase III bond release under the Federal regulations) while the Federal regulation requires that vegetation parameters equal or exceed the success standard for the last two years, North Dakota's proposed revision is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(c)(3)(i). Therefore the Director approves North Dakota's proposed revisions at Section 2–H of its revegetation policy document.

4. Section II–I, Standards for Evaluation of Revegetation Success (Recreational Land Use Standards for Tree and Shrub Stocking)

In response to the required amendment at 30 CFR 934.16(bb), North Dakota proposed to revise the introduction to Section II–I of its revegetation policy document, adding language to require that if areas developed for recreation use include woodland plantings and/or shelterbelts, the woody plants must meet all applicable fourth-stage bond release standards described under sections II–F and II–G of that document. North Dakota proposed to revise its discussion of postmining assessment by adding language to require: (1) If a recreation area includes woodland plantings, a demonstration, with supporting data, must be included showing that the applicable standards described under section II–F are met, and (2) if a recreation area includes shelterbelts, a demonstration, with supporting data, must be included showing that the applicable standards described under section II–G are met. North Dakota also proposed to revise its discussion of revegetation success standards for third and fourth stage bond release by adding a statement that, for recreation areas that include woodland plantings and/or

shelterbelts, the woody plants must meet all applicable standards described in sections II–F and II–G for fourth-stage bond release.

OSM required at 30 CFR 934.16(bb) that North Dakota amend its program to revise Section II–I of its revegetation policy document to require that, for areas with a postmining land use of recreation, tree and shrub stocking standards meet all the requirements of 30 CFR 816.116(b)(3).

The Federal regulations at 30 CFR 816.116(b)(3) require for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit-specific basis. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility. Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

As proposed by North Dakota, Section II–I incorporates by reference the requirements of Sections II–F, Woodland, and II–G, shelterbelts. These sections include requirements for consultation and approval of stocking and planting arrangements, time-in-place requirements, and ground cover standards. Both of these sections were approved by OSM as no less effective than the requirements of 30 CFR 816.116(b)(3) on July 14, 1995 (60 FR 36213, 36215). The Director finds that, by incorporating references to Section II–F, Woodland, and II–G, Shelterbelts, Section II–I of North Dakota's revegetation policy document is no less effective than the Federal regulations and satisfies the required program amendment. The Director approves the proposed revisions at Section II–1 and removes the required amendment at 30 CFR 934.16(bb).

5. Section III–D, Standards for Evaluation of Revegetation Success (Methods for Sampling Woodland Cover)

North Dakota proposed to revise Section III–D of its revegetation policy document to allow the use of a Daubenmire frame or line intercept methods for measuring total cover in woodlands. These methods may only be used where woody vegetation is present.

The Federal regulations at 30 CFR 816.116(a)(1) require that the regulatory authority identify and include in their approved program statistically valid sampling techniques.

The two cover sampling techniques proposed for inclusion in the North Dakota guidance document are well recognized and statistically valid methods for evaluating ground cover in plant communities. The Director finds that North Dakota's proposed revision of Section III–D in the revegetation policy document is therefore no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program. In response, Ronald E. Ries, Range Scientist with the U.S. Department of Agriculture's Agriculture Research Service responded on May 28, 1998, that the proposed changes are technically sound and make the use of the standards more workable based on field experience of operators and the ND Public Service Commission (administrative record No. ND–AA–09).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND–AA–07). EPA did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–AA–07). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves North Dakota's proposed amendment as submitted on April 9, 1998. The Director approves, as discussed in: finding No. 1, Section II–C, concerning standards for evaluation of revegetation success; finding No. 2, Section II–F, concerning cover standards for woodlands; finding No. 3, Section II–H, concerning wetlands success standards; finding No. 4, Section II–I, concerning recreational land use success standards for tree and shrub stocking; and finding No. 5, Section III–D, concerning methods for sampling woodland cover. Also, as discussed in findings Nos. 1 and 4, the Director removes the required program amendments at 30 CFR 934.16(aa) and (bb).

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that 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 the Federal regulations at 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.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. 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 that 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 signficiant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. 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 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 21, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read a follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
April 9, 1998	January 8, 1999	Revegetation Success Policy Doc. II–C, Prime Farmlands standards. II–F, Woodlands cover standards. II–H, Wetlands standards. II–I, Recreational land use standards for tree and shrub stocking. III–D, Methods for sampling woodland cover.

§ 934.16 [Amended]

3. Section 934.16 is amended by removing and reserving paragraphs (aa) and (bb).

[FR Doc. 99–383 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA Reg. 5410.8]

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This administrative amendment is a result of the provisions of the Electronic Freedom of Information Act Amendments of 1996, updates address listings in Appendix B, and makes other minor administrative changes.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (703) 767–1005.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 290

Freedom of information.

Accordingly, 32 CFR part 290 is amended to read as follows:

PART 290—[AMENDED]

1. The authority citation for part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 290.4 [Amended]

2. Section 290.4 is amended by revising ''It is the policy of DCAA to:'' to read ''Agency policy and procedures are those cited in DoD 5400.7–R. In addition, DCAA will:''

§ 290.5 [Amended]

3. Section 290.5 is amended in paragraph (a) by revising ''Chief, Information Resources Management Branch (CMR)'' to read ''Chief, Administrative Management Division''

§ 290.6 [Amended]

4. Section 290.6 is amended in paragraph (a)(1)(i) by revising ''Information Resources Management Branch'' to read ''Chief, Administrative Management Division'', paragraph (a)(2), introductory text, by removing ''Chief, Information Resources Management Branch, CMR, under the supervision and guidance of the'', paragraph (a)(3), introductory text, by revising ''Chief, Information Resources Management Branch'' to read ''Chief, Administrative Management Division'', paragraph (a)(3)(iii), by removing ''5410.12 [5], Freedom of Information Act, A Manager's Guide to a Complex Law, and DCAA Pamphlet'' and footnote 5, by redesignating footnotes ''6 and 7'' as ''5 and 6'', by removing paragraph (a)(3)(vii), redesignating paragraph (a)(3)(viii) as paragraph (a)(3)(vii), and in paragraph (b)(2)(iii), last sentence, by

revising ''calendar'' to read ''fiscal'' and ''January'' to read ''October''.

§ 290.7 [Amended]

5. Section 290.7 is amended in paragraph (b), last sentence, by revising ''Appendix N.'' to read ''Appendix G.'', paragraph (d), last sentence, by removing ''quarterly'', in paragraph (e)(1), last sentence, by revising ''CMO'' to read ''CM'', paragraph (e)(3), last sentence, by revising ''10'' to read ''20'', paragraph (f)(4), first sentence, by capitalizing the ''r and d'' in ''regional director'', paragraph (f)(5)(i)(D) by revising ''10'' to read ''20'', paragraph (f)(5)(ii), introductory text, first sentence, by revising ''10'' to read ''20'', paragraph (f)(5)(ii), second sentence, by revising ''10'' to read ''20'', paragraph (f)(5)(iv), first sentence, by revising ''10'' to read ''20'', paragraph (f)(5)(iv), second sentence, by revising ''10'' to read ''20''.

Appendix A to Part 290—[Amended]

6. Appendix A to part 290, is amended in paragraph (e), first sentence, by revising ''six'' to read ''five'', in both instances, paragraph (e)(2)(iii), by adding ''Defense Contract Audit Institute and the'' before ''Technical Services Center'', paragraph (e)(2)(iv), by removing '', and supervises the Defense Contract Audit Institute in Memphis, Tennessee'', paragraph (e)(3), first sentence, by revising ''Lexington'' to read ''Lowell'',

Appendix B to Part 290—[Amended]

7. Appendix B to part 290, under California, the introductory text is zing the ''s'' in ''suite'' to read ''Suite'', by revising ''228–7036'' to read ''228–7083'', under Georgia, the introductory text is amended by capitalizing the ''s'' in ''suite'', under Massachusetts, the introductory text is amended by revising ''83 Hartwell Avenue, Lexington, MA 02173–3163, (617) 377–9756'' to read ''59 Composite Way, Suite 300, Lowell, MA 01851–5150, (978) 551–9722'', under Virginia in the introductory text, by revising ''CMR'' to read ''CM'' and ''(703) 767–1244'' to read ''(703) 767–1000'', paragraph (a)(1), first sentence by revising (703) 767–1244'' to read (703) 767–1066, after the first sentence, by adding ''Many of these items, among others, may be obtained from the DCAA Web site.'', and paragraph (a)(2), last sentence, by revising ''CMR, Cameron Station, Alexandria, VA 22304–6178'' to read ''CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219''.

Dated: December 31, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–274 Filed 1–7–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ04

Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, or Training and Rehabilitation Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: In a document published as a final rule in the **Federal Register** on August 24, 1998 (63 FR 45004), we amended our adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death due to VA hospital care, medical or surgical treatment, examination, or training and rehabilitation services. The amendments provided that benefits are payable for additional disability or death caused by VA hospital care, medical or surgical treatment, or examination only if VA fault or ''an event not reasonably foreseeable'' proximately caused the disability or death. Further, the amendments provided that benefits are also payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services.

We established the amendments without prior notice and comment based on our conclusion that they consisted of only restatements and interpretations of statutory provisions. Judicial review has been sought on the basis that the rulemaking establishing the final rule constituted substantive rulemaking that required an opportunity for prior notice and comment. We believe that our action was legally correct. Even so, as provided in a settlement agreement, by this document we are rescinding the final rule of August 24. This moots the pending litigation. The rescinded rule will be considered to have no force or effect in any claim decided on or after August 24, 1998. Further, we intend to propose provisions similar to those in the rescinded rule in a document to be published in the Proposed Rules section of a future issue of the **Federal Register**. This will provide interested individuals an opportunity to comment on the proposed amendments.

DATES: Effective Date: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: David Barrans, Staff Attorney (022), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: This final rule concerns restatements and interpretations of statutory provisions. Accordingly, in accordance with the provisions of 5 U.S.C. 553, it is promulgated without notice and comment and without a delayed effective date.

The Secretary of Veterans Affairs hereby 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. This rule only affects individuals. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking proceeding is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603–604.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability Benefits, Health Care, Pensions, Veterans, Vietnam.

Approved: January 5, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth above, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

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

2. In § 3.358, the section heading and paragraph (a) are revised to read as follows:

§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

(a) *General.* Where it is determined that there is additional disability resulting from a disease or injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical

treatment, or examination, compensation will be payable for such additional disability.

(**Authority:** 38 U.S.C. 1151)

* * * * *

§§ 3.361 through 3.363 [Removed]

2. Sections 3.361 through 3.363 are removed.

§ 3.800 [Amended]

3. The introductory text to § 3.800 is removed.

[FR Doc. 99–432 Filed 1–7–99; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300768; FRL 6050–5]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebuconazole in or on grapes, grass forage, grass hay, grass seed screenings, grass straw, milk, meat by-products of cattle, goats, horses and sheep. Bayer Corporation requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective January 8, 1999. Objections and requests for hearings must be received by EPA on or before March 9, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300768], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300768], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300768]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 1997, (62 FR 16590) (5F4577) and of March 5, 1997, (62 FR 10047) (6F4669), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP) for tolerances by Bayer Corporation, 8400 Hawthorne Road, Kansas City, MO, 64120–0013 (amended in a letter from Bayer Corporation to EPA dated September 18, 1998). These notices included summaries of the petitions prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.474 be amended by establishing tolerances for residues of the fungicide, tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on grapes at 5 parts per million (ppm), grass forage at 8 ppm, grass hay at 25 ppm, grass seed screenings at 55 ppm, grass straw at 30 ppm, and by establishing tolerances for the combined residues of tebuconazole and its 1-(4-chlorophenyl)-4,4-dimethyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-pentane-3,5-diol metabolite (HWG 2061), hereafter referred to in this document as tebuconazole, in milk at 0.1 ppm, and meat by-products of cattle, horses, goats and sheep at 0.2 ppm.

I. Risk Assessment and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebuconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of tebuconazole in or on grapes, grass forage, grass hay, grass seed screenings, grass straw, milk, meat by-products of cattle, horses, goats and sheep. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the

sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebuconazole is discussed below.

1. *Acute toxicity*. Tebuconazole exhibits moderate toxicity. The rat acute oral LD_{50} = 3,933 milligram/kilogram (mg/kg) (category III); the rabbit acute dermal LD_{50}>5,000 mg/kg (category IV); and the rat acute inhalation LC_{50}>0.371 milligram/Liter (mg/L) (category II). Technical tebuconazole was slightly irritating to the eye (category III) and was not a skin irritant (category IV) in rabbits. Tebuconazole was not a dermal sensitizer.

2. *Subchronic toxicity*—i. In a 90–day oral feeding study, rats were administered technical tebuconazole at levels of 0, 100, 400, or 1,600 ppm (0, 8, 34.8, or 171.7 mg/kg/day for males or 0, 10.8, 46.5, or 235.2 mg/kg/day for females). In males, the no observed adverse effect level (NOAEL) was 34.8 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 171.7 mg/kg/day based on decreased body weight and decreased body weight gain, adrenal vacuolation and spleen hemosiderosis. In females, the NOAEL was 10.8 mg/kg/day and the LOAEL of 46.5 mg/kg/day was based on adrenal vacuolation.

ii. In a 90–day oral feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 200, 1,000, or 5,000 ppm (0, 74, 368, or 1,749 mg/kg/day for males or 0, 73, 352, or 1,725 mg/kg/day for females). In females, the NOAEL was 73 mg/kg/day and the LOAEL was 352 mg/kg/day based on decreased body weight and decreased body weight gain, decreased food consumption and increased liver *N*-demethylase activity. At the highest dose tested (HDT), lens opacity was seen in all males and in one female and cataracts were seen in three females.

iii. In a 21–day dermal toxicity study, rabbits were exposed dermally to technical tebuconazole 5 days a week at doses of 0, 50, 250, or 1,000 mg/kg/day. No significant systemic effects were seen. The systemic NOAEL > 1,000 mg/kg/day.

iv. In a 21–day inhalation toxicity study, rats were exposed to technical tebuconazole (15 exposures – 6 hours/day for 3 weeks) at airborne concentrations of 0, 0.0012, 0.0106, or 0.1558 mg/L/day. The NOAEL was 0.0106 mg/L/day and the LOAEL was 0.1558 mg/L/day based on piloerection and induction of liver *N*-demethylase.

3. *Chronic toxicity*—i. In a 2–year combined chronic feeding/carcinogenicity study, rats were administered technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm (0, 5.3, 15.9, or 55 mg/kg/day for males or 0, 7.4, 22.8, or 86.3 mg/kg/day for females). In males, the NOAEL was 5.3 mg/kg/day and the LOAEL was 15.9 mg/kg/day based on C-cell hyperplasia in the thyroid gland. In females, the NOAEL was 7.4 mg/kg/day and the LOAEL was 22.8 mg/kg/day based on body weight depression, decreased hemoglobin, hematocrit, mean corpuscular volume and mean corpuscular hemoglobin concentration and increased liver microsomal enzymes. No evidence of carcinogenicity was found at the levels tested.

ii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 40, 200, or 1,000 (weeks 1–39) and 2,000 ppm (weeks 40–52) (0, 1, 5 or 25/50 mg/kg/day for males and females). The NOAEL was 1 mg/kg/day and the LOAEL was 5 mg/kg/day based on ocular lesions (lenticular and corneal opacity) and hepatic toxicity (changes in the appearance of the liver and increased siderosis).

iii. In a 1–year chronic feeding study, Beagle dogs were administered technical tebuconazole at levels of 0, 100, or 150 ppm (0, 3.0, or 4.4 mg/kg/day for males or 0, 3.0 or 4.5 mg/kg/day for females). The NOAEL was 3.0 mg/kg/day and the LOAEL was 4.4 mg/kg/day based on adrenal affects in both sexes. In males there was hypertrophy of adrenal zona fasciculata cells amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and in controls. Other adrenal findings in males included fatty changes in the zona glomerulosa (3/4) and lipid hyperplasia in the cortex (2/4) at 150 ppm vs. (1/4) for both effects at 100 ppm and control dogs. In females there was hypertrophy of zona fasciculata cells of the adrenal amounting to 4/4 at 150 ppm and to 0/4 at 100 ppm and 1/4 in controls. Fatty changes in the zona glomerulosa of the female adrenal amounted to 2/4 at 150 ppm and to 1/4 at 100 ppm and in controls.

4. *Carcinogenicity*. In a 91–week carcinogenicity study, mice were administered technical tebuconazole at levels of 0, 500, or 1,500 ppm (0, 84.9, or 279 mg/kg/day for males or 0, 103.1, or 365.5 mg/kg/day for females). Neoplastic histopathology consisted of statistically significant increased incidences of hepatocellular neoplasms; adenomas (35.4%) and carcinomas (20.8%) at 1,500 ppm in males and carcinomas (26.1%) at 1,500 ppm in females. Statistically significant decreased body weights and increased food consumption were reported that were consistent with decreased food efficiency at 500 and 1,500 ppm in males and at 1,500 ppm in females. Clinical chemistry values (dose-dependent increases in plasma GOT, GPT and Alkaline Phosphatase) for both sexes were consistent with hepatotoxic effects at both 500 and 1,500 ppm. Relative liver weight increases reached statistical significance at both 500 and 1,500 ppm in males and at 1,500 ppm in females. Non-neoplastic histopathology included dose-dependent increases in hepatic pancinar fine fatty vacuolation, statistically significant at 500 and 1,500 ppm in males and at 1,500 ppm in females. Other histopathology included significant oval cell proliferation in both sexes and dose-dependent ovarian atrophy that was statistically significant at 500 and 1,500 ppm. The Maximum Tolerated Dose (MTD) was achieved at or around 500 ppm.

5. *Developmental toxicity*—i. In a developmental toxicity study, pregnant female rats were gavaged with technical tebuconazole at levels of 0, 30, 60, or 120 mg/kg/day between days 6 and 15 of gestation. The maternal NOAEL was 30 mg/kg/day and the maternal LOAEL was 60 mg/kg/day based on increased absolute and relative liver weights. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 60 mg/kg/day based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum and limbs plus an increase in supernumerary ribs.

ii. In a developmental toxicity study, pregnant female rabbits were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 18 of gestation. The maternal NOAEL was 30 mg/kg/day and the maternal LOAEL was 100 mg/kg/day based on minimal depression of body weight gains and food consumption. The developmental NOAEL was 30 mg/kg/day and the developmental LOAEL was 100 mg/kg/day based on increased postimplantation losses, malformations in 8 fetuses out of 5 litters (including peromelia in 5 fetuses/4 litters; palatoschisis in 1 fetus/1 litter), hydrocephalus and delayed ossification.

iii. In a developmental toxicity study, pregnant female mice were gavaged with technical tebuconazole at levels of 0, 10, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 1 of study) or at levels of 0, 10, 20, 30, or 100 mg/kg/day between days 6 and 15 of gestation (part 2 of study). The maternal NOAEL was 10 mg/kg/day and the maternal LOAEL was 20 mg/kg/day. Maternal toxicity (hepatocellular vacuolation and elevations in AST, ALP and alkaline phosphatase) occurred at

all dose levels but was minimal at 10 mg/kg/day. Reduction in mean corpuscular volume in parallel with reduced hematocrit occurred at doses greater than or equal to 20 mg/kg/day. The liver was the target organ. The developomental NOAEL was 10 mg/kg/day and the developmental LOAEL was 30 mg/kg/day based on an increase in the number of runts.

iv. In a developmental toxicity study, pregnant female mice were administered dermal doses of technical tebuconazole applied at levels of 0, 100, 300, or 1,000 mg/kg/day between days 6 and 15 of gestation. Equivocal maternal toxicity was observed 1,000 mg/kg/day.The maternal NOAEL was ≈ 1,000 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day.

v. In a 2–generation reproduction study, rats were fed technical tebuconazole at levels of 0, 100, 300, or 1,000 ppm, (0, 5, 15, or 50 mg/kg/day, males and females). The parental maternal NOAEL was 15 mg/kg/day and the parental LOAEL was 50 mg/kg/day based on depressed body weights, increased spleen hemosiderosis and decreased liver and kidney weights. The reproductive NOAEL was 15 mg/kg/day and the reproductive LOAEL of 50 mg/kg/day based on decreased pup body weights from birth through 3 – 4 weeks.

6. *Mutagenicity*. An Ames test with *Salmonella sp*., a mouse micronucleus assay, a sister chromatid exchange assay with Chinese hamster ovary cells, and an unscheduled DNA synthesis assay with rat hepatocytes provided no evidence of mutagenicity.

7. *Dermal penetration*. Radio-labeled technical tebuconazole in ethanol was applied dermally to rats in doses of 0.604, 5.85, 52.4, or 547 micrograms per square centimeter (µg/cm^2). The percent of dose absorbed after 24 hours amounted to 27.77, 27.06, 23.01, and 6.38% of the applied dose, respectively. The amount which remained on the application site after soap and water wash increased with the dose and amounted at 24 hours to 24.7, 24.4, 32.02, and 53.11% of the above applied doses, respectively. The percent of the dose absorbed after 8 hours was 49.9% at the dose of 0.604 µg/cm^2. The ethanol used as a solvent may have led to an overestimate of absorption.

8. *Neurotoxicity*. No acute or subchronic neurotoxicity studies are available for tebuconazole. In a battery of subchronic and chronic studies, there were no indications of treatment-related effects on the central or peripheral nervous system of experimental animals. In the prenatal developmental toxicity studies, however, several effects on the fetal nervous system were noted. These effects included alterations in the development of the fetal nervous system in mice (increased malformations of the brain and spinal column, and exencephaly), in rats (anophthalmia), and in rabbits (neural tubule defects characterized as meningocoele and spina bifida, and hydrocephalus).

9. *General metabolism*. Rats were gavaged with 1 or 20 mg/kg radio-labeled technical tebuconazole. 98.1 % of the oral dose was absorbed. Within 72 hours of dosing, over 87% of the dose was excreted in urine and feces. At sacrifice (72 hours post dosing), total residue (-GI tract) amounted to 0.63% of the dose. A total of 10 compounds were identified in the excreta. A large fraction of the identified metabolites corresponded to successive oxidations steps of a methyl group of the test material. At 20 mg/kg, changes in detoxication patterns may be occurring.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA selected the NOAEL of 10 mg/kg/day from a developmental toxicity study in mice based on an increased incidence of runts observed at the LOAEL of 30 mg/kg/day. The population subgroups of concern are females (13+ years), infants, and children. An Uncertainty Factor of 100 was used to account for inter-species extrapolation and intra-species variability. On this basis, the acute Reference dose (RfD) for tebuconazole was calculated to be 0.10 mg/kg/day. EPA determined that a 10 x FQPA safety factor is applicable to the subpopulations females (13+ years), as well as infants and children because the effects seen were developmental, the severity of observed effects and the effects are presumed to occur following ''acute'' exposures. A dose and toxicity endpoint were not identified for the general population.

2. *Short - and intermediate - term toxicity*. No short - intermediate - or long-term dermal toxicity endpoints were identified. For short - intermediate - and long-term inhalation toxicity, the NOAEL of 0.0106 mg/L/day from the 21–day rat inhalation toxicity study was selected for risk assessment. The LOAEL of 0.1558 mg/L/day was based on induction of liver microsomal enzymes and piloerection.

3. *Chronic toxicity*. EPA established the RfD for tebuconazole at 0.03 mg/kg/day. The RfD is based on a 1–year feeding study in dogs in which the NOAEL was 3.0 mg/kg/day and the LOAEL was 4.4 mg/kg/day based on histopathological changes in the adrenal gland. An Uncertainty Factor of 100 was used to account for inter-species extrapolation and intra-species variability.

4. *Carcinogenicity*. EPA concluded that tebuconazole should be classified as a Group C - possible human carcinogen and determined that the RfD approach be used to estimate human risk. A statistically significant increase in the incidence of hepatocellular adenomas, carcinomas and combined adenoma/carcinomas was observed in male mice at the highest dose tested; a statistically significant increase in the incidence of hepatocellular carcinomas and combined adenomas/carcinomas was observed in female mice at the highest dose tested; and tebuconazole was determined to be structurally related to at least six other triazole fungicides that also produce hepatocellular tumors in male and/or female mice.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances are established under 40 CFR §180.474(a) for residues of the fungicide tebuconazole in or on bananas at 0.05 ppm, barley forage, hay and straw at 0.10, barley grain at 0.05 ppm, cherries at 4.0 ppm, oat forage, hay and straw at 0.10 ppm, oat grain at 0.05 ppm, peaches (includes nectarines) at 1.0 ppm, peanuts at 0.1 ppm, peanut hulls at 4.0 ppm, wheat forage, hay, and straw at 0.10 ppm, and wheat grain at 0.05 ppm. Time-limited tolerances for section 18 emergency exemptions are established under 40 CFR §180.474(b)(1) for residues of the fungicide tebuconazole in or on barley grain at 2.0 ppm, barley hay and straw at 20 ppm; pistachios at 1.0 ppm, wheat hay at 15 ppm, and wheat straw at 2.0 ppm. Time-limited tolerances for section 18 emergency exemptions are established under 40 CFR §180.474(b)(2) for residues of the fungicide tebuconazole in or on milk at 0.1 ppm; cattle, goats, hogs, horses, poultry, and sheep meat byproducts at 0.2 ppm. Risk assessments were conducted by EPA to assess dietary exposures from tebuconazole as follows.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by

section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment used a highly refined Monte Carlo analysis based on the following assumptions: percent crop treated data were used for all commodities; maximum residue levels from crop field trials for single serving commodities such as bananas and peaches were utilized; average residue levels from crop field trials were used for blended commodities such as fruit juices, grains and oils; anticipated residue levels for ruminant commodities were calculated using a livestock diet constructed from anticipated residue levels for livestock feed items. Application of the 10 x safety factor to the Acute RfD of 0.10 mg/kg/day results in an acceptable acute dietary risk of 10% or less of the Acute RfD for the following subpopulations of concern: 8.5% for children (1 to 6 years); 7.4% for non-nursing infants (<1 year); 7% for all infants (<1 year); 6.7% for nursing infants (<1 year); and 3.3% for children (7 to 12 years) and females (13+ years). Application of the 10 x safety factor to the Acute RfD results in an acceptable acute dietary exposure of 10% or less of the Acute RfD.

ii. *Chronic exposure and risk.* The chronic dietary (food only) risk assessment used the RfD of 0.03 mg/kg/day. EPA used the Dietary Exposure Evaluation Model (DEEM) which utilized data from the USDA 1989–91 Continuing Survey of Food Intake by Individuals (CSFII). The risk assessment is very conservative and uses the Theoretical Maximum Residue Concentration (TMRC) which assumes that 100% of all treated food and/or feed commodities having tebuconazole tolerances will contain tebuconazole residues at the tolerance level. EPA generally has no concern for exposures below 100% of the chronic RfD (when the FQPA factor has been removed) because this RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The Agency has estimated that chronic dietary exposure to tebuconazole from food only will utilize 12% of the chronic RfD for the population subgroup, U.S. Population, and the maximum percent of the chronic RfD (41%) is utilized by children (1–6 years).

2. *From drinking water.* There are no monitoring data for residues of tebuconazole in ground water. No health advisory levels or Maximum Contaminant Levels for residues of tebuconazole in drinking water have been established. Tebuconazole is persistent and relatively immobile in water.

The Agency used the Screening Concentration in Ground Water (SCI-GROW) screening model to determine the Estimated Environmental Concentration (EEC) of 0.3 µg/L of tebuconazole in ground water for both chronic and acute analysis. SCI-GROW is an empirical model based upon actual ground water monitoring data collected from the registration of a number of pesticides that serve as benchmarks for the model. SCI-GROW provides realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sand soils and depth to ground water of 10 to 20 feet). EPA compares drinking water levels of concern (DWLOC) directly with the SCI-GROW model values.

The Agency used the Generic Estimated Environmental Concentration (GENEEC) screening model to determine the surface water acute EEC of 14 µg/L (peak) and the surface water chronic EEC of 10 µg/L (avg 56–day concentration). GENEEC is used to estimate pesticide concentrations in surface water for up to 56 days after a single runoff event. GENEEC provides an upper-bound concentration value and can substantially overestimate (by a ≤ 3-fold factor) true pesticide concentrations in drinking water. EPA applies a factor of 3 to GENEEC model values when determining whether or not a level of concern has been exceeded. If the GENEEC model value is ≤ 3 times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed.

i. *Acute exposure and risk.* The acute DWLOC is 200 µg/L for females (13+ years old) and 14 µg/L for infants/children. The EEC's for acute analysis of water are 0.3 µg/L (ground water) and 14 µg/L (surface water). EPA does not expect the acute aggregate exposure to exceed 10% of the acute RfD. Therefore, EPA concludes with reasonable certainty that no harm will result to the subpopulations of concern, females (13+ years old), or infants and children from aggregate exposure to residues of tebuconazole.

ii. *Chronic exposure and risk.* The chronic DWLOC is 910 µg/L for the U.S. population, 720 µg/L for females (13+ years, nursing), and 190 µg/L for infants/children. The EEC's for chronic analysis of water are 0.3 µg/L (ground water) and 10 µg/L (surface water). EPA does not expect the chronic aggregate exposure to exceed 100% of the chronic RfD. Therefore, EPA concludes with reasonable certainty that no harm will result from chronic (non-cancer) aggregate exposure to tebuconazole residues.

3. *From non-dietary exposure.* Tebuconazole is currently registered for use on the following residential non-food sites: the formulation of wood-based composite products, wood products for in-ground contact, plastics, exterior paints, glues and adhesives. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Thus, no risk is expected for residential nonfood sites.

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

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

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Application of the 10x safety factor for enhanced susceptibility of infants and children to the Acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure of 10% or less of the Acute RfD for the subpopulations of concern, females (13+ years), infants and children. The acute

DWLOC for females (13+ years) is 200 µg/L and for infants/children is 14 µg/L. These values are higher than the SCI-GROW EEC value of 0.3 µg/L for ground water and the GENEEC acute EEC of 14 µg/L for surface water (peak value) when divided by three. Therefore, EPA concludes with reasonable certainty that the potential risks from aggregate acute exposure (food & water) would not exceed the Agency's level of concern.

2. *Chronic risk*. Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to tebuconazole from food will utilize 12% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 years old, as discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

3. *Aggregate cancer risk for U.S. population*. EPA classified tebuconazole as a Group C - possible human carcinogen and determined that the RfD approach be used to estimate the carcinogenic risk to humans. Risk concerns for carcinogenicity due to long-term consumption of tebuconazole residues are adequately addressed by the aggregate chronic exposure analysis using the chronic RfD. Therefore, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, EPA considered data from developmental toxicity studies in mice, rats, rabbits and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity ecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity*. Pre-natal developmental toxicity studies indicated several effects on the fetal nervous system. These effects included alterations in the development of the fetal nervous system in mice (increased malformations of the brain and spinal column, and exencephaly), in rats (anophthalmia), and in rabbits (neural tubule defects characterized as meningocoele and spina bifida, and hydrocephalus). On the basis of comparable developmental and maternal NOAEL's and LOAEL's, EPA determined that there was no indication of increased sensitivity of the offspring of mice, rats, or rabbits to pre-natal or post-matal exposure to tebuconazole. However, EPA does note that there is increased sensitivity in the pups based on the more severe developmental effects observed at the developmental LOAEL's and at higher doses as compared to the maternal effects observed at the maternal LOAEL's and at higher doses. EPA also notes that tebuconazole is structurally related to several other triazole fungicides which have demonstrated a developmental LOAEL below the maternal LOAEL in rats and/or rabbits.

iii. *Conclusion*. EPA determined that based on the observed fetal nervous system effects and the fact that data on several other structurally related triazole fungicides indicate neurotoxic effects, a developmental neurotoxicity study will be required. Otherwise, there is a complete toxicity database for tebuconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor be retained because of the increased sensitivity of pups as demonstrated by the severity of the observed developmental effects, evidence of alterations in the development of the fetal nervous system, the structural relationship of tebuconazole to several other triazole fungicides which have been shown to cause developmental effects, and the fact that a developmental neurotoxicity study will be required.

2. *Acute risk*. EPA determined that the 10x factor to account for enhanced sensitivity of infants and children be retained . Application of the 10x safety factor to the Acute RfD of 0.10 mg/kg/day results in an acceptable acute dietary risk of 10% or less of the Acute RfD for the following subpopulations of concern: 8.5% for children (1 to 6 years); 7.4% for non-nursing infants (<1 year); 7% for all infants (<1 year); 6.7% for nursing infants (<1 year); and 3.3% for children (7 to 12 years) and females (13+ years). EPA concludes with reasonable certainty that the potential risks from aggregate acute exposure (food & water) would not exceed the Agency's level of concern.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that the highest aggregate exposure to tebuconazole from food will utilize 41% of the RfD for children (1–6 years). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residue of concern in plants is tebuconazole. The residues of concern in animals are the parent compound, tebuconazole, and its 1-(4-chlorophenyl)-4,4-dimethyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-pentane-3,5-diol metabolite. Tolerances on animal commodities milk at 0.1 ppm, and meat by-products of cattle, horses, goats and sheep at 0.2 ppm are required in conjunction with this use.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin

Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

EPA has concluded that residue data submitted in support of the tolerances for grapes at 5 ppm, grass forage at 8 ppm, grass hay at 25 ppm, grass seed screenings at 55 ppm, grass straw at 30 ppm, milk at 0.1 ppm, and meat by-products of cattle, horses, goats and sheep at 0.2 ppm indicate that the tolerances requested by the petitioner are adequate.

D. International Residue Limits

There are no established Codex, Canadian, or Mexican MRLs established for tebuconazole. A Codex MRL is proposed for residues of tebuconazole in or on grapes at 2.0 ppm. There are no proposed MRLs for tebuconazole in or on grapes in Canada and Mexico. Tolerance compatibility problems do not exist with respect to Mexico or Canada, but do exist with respect to the Codex MRL. The submitted residue data support a U.S. tolerance level of 5.0 ppm for tebuconazole in/on grapes, and it is not possible to harmonize the proposed tolerance for residues of tebuconazole in or on grapes with Codex. The higher residues in the U.S. may be due to different agricultural practices and/or climatic conditions.

E. Rotational Crop Restrictions

Rotational crop restrictions are not required as rotation to other crops in conjunction with the production of grapes and grass grown for seed is not considered significant.

IV. Conclusion

Therefore, the tolerances are established for residues of tebuconazole in or on grapes at 5 ppm, grass forage at 8 ppm, grass hay at 25 ppm, grass seed screenings at 55 ppm, grass straw at 30 ppm, and tolerances are established for the combined residues of tebuconazole, and its 1-(4-chlorophenyl)-4,4-dimethyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-pentane-3,5-diol metabolite in milk at 0.1 ppm, and meat by-products of cattle, horses, goats and sheep at 0.2 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 9, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33. If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300768] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to*

Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), 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. If the mandate is unfunded, EPA must 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 21, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In §180.474, in paragraph (a), by designating the text after the heading as paragraph (a)(1) and alphabetically adding the following commodities to the table and by adding a new paragraph (a)(2) to read as follows:

§180.474 Tebuconazole; tolerances for residues.

(a)(1) * * *

Commodity	Parts per million
* * * * *	
Grapes	5.0
Grass, forage	8.0
Grass, hay	25.0
Grass, seed screenings.	55.0
Grass, straw	30.0
* * * * *	

(a)(2) Tolerances are established for the combined residues of the fungicide, tebuconazole and its 1-(4-chlorophenyl)-4,4-dimethyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-pentane-3,5-diol metabolite.

Commodity	Parts per million
Cattle, mbyp	0.2
Goats, mbyp	0.2
Horses, mbyp	0.2
Milk	0.1
Sheep, mbyp	0.2

* * * * *

[FR Doc. 99–319 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42 and 101–43

RIN 3090–AF39

Criteria for Reporting Excess Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Temporary regulation; extension of effective date.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding criteria for reporting excess personal property to GSA.

DATES: Effective date: This extension is effective January 8, 1999. The temporary regulation published January 15, 1997 was effective from January 15, 1997 through January 15, 1998. A supplement published on December 31, 1997 extended the period of effectiveness through January 15, 1999. The period of effectiveness is further extended through January 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Office of Governmentwide Policy, GSA, 202–501–3828.

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation H–29 was published in the **Federal Register** on January 15, 1997, 62 FR 2022. The expiration date of the temporary regulation was January 15, 1998. A supplement published in the **Federal Register** on December 31, 1997, 62 FR 68216, extended the expiration date through January 15, 1999. This supplement further extends the expiration date through January 15, 2000.

List of Subjects in 41 CFR Parts 101–42 and 101–43

Archives and records, Computer technology, Information technology, Government procurement, Property management, Records management, and Telecommunications.

Therefore the effective date for Temporary Regulation H–29 published at 62 FR 2022, January 15, 1997, and extended until January 15, 1999 at 62 FR 68216, December 31, 1997, is further extended through January 15, 2000.

Dated: December 29, 1998.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 99–372 Filed 1–7–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278–8336–02; I.D. 101598B]

RIN 0648–AL76

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

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

ACTION: Final 1999 initial specifications.

SUMMARY: NMFS issues final initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year that will prevent overfishing of these fisheries.

DATES: Effective January 1, 1999 through December 31, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish specifications for initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. In addition to commercial quotas, the Council, in consultation with its Squid, Mackerel, and Butterfish Technical Monitoring Committee, may recommend revisions to the amount of squid and butterfish that may be retained, possessed, and landed by vessels issued the incidental catch permit, commercial minimum fish sizes, commercial trip limits, commercial seasonal quotas/closures for *Loligo* or *Illex* squid, minimum mesh sizes, commercial gear restrictions, recreational harvest limit, recreational minimum fish size, and recreational possession limits.

Proposed 1999 initial specifications, requesting public comment, were published on November 17, 1998 (63 FR 63819). With the exception of the proposed mechanism for closure of the incidental fishery, the final initial specifications are unchanged from those that were published as proposed. A complete discussion appears in the proposed specifications and are not repeated here.

1999 Final Specifications

The following table contains the final initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	[1] N/A	16,000
ABC	21,000	19,000	383,000	7,200
IOY	21,000	19,000	[2] 75,000	5,900
DAH	21,000	19,000	[3] 75,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	10,000	0

FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999—Continued

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
TALFF	0	0	0	0

[1] Not applicable.
[2] OY may be increased during the year, but the total will not exceed 383,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.

Joint Ventures

Current MSB regulations allow for in-season adjustments of the annual specifications. These regulations authorize the Administrator, Northeast Region, NMFS (Regional Administrator), in consultation with the Council, to make adjustments during the fishing year by publication in the **Federal Register** stating the reasons for such an action and providing a 30-day public comment period. In conjunction with the proposed 1999 initial annual specifications action, the Regional Administrator sought Council input and public comment on a proposed in-season adjustment of the 1999 Atlantic mackerel JVP up to a total of 15,000 mt (this could result in an increase of as much as 5,000 mt in IOY and DAH), in the event additional JV applications are submitted. NMFS believed that by announcing this in-season adjustment during the proposed rule process, it would facilitate more timely use of the existing regulatory provision, allowing in-season increases to specifications including JVP. NMFS believes this action could provide another opportunity for U.S. vessels to participate in JV fisheries without any negative impacts on the Council's long-term goal to Americanize the fishery.

Three special conditions imposed in previous years continue to be imposed on the 1999 Atlantic mackerel fishery as follows: (1) JVs are allowed south of 37°30′ N. latitude, but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator must ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; and (3) the mackerel OY may be increased during the year, but the total should not exceed ABC.

Changes From Proposed Rule

Closure of the Incidental Fishery

Current MSB regulations authorize closure of the directed fishery in the EEZ for *Loligo* squid, *Illex* squid, or butterfish when 95 percent of DAH has been harvested. The closure would remain in effect for the remainder of the fishing year, with incidental catches allowed. On August 25, 1998, NMFS determined that 95 percent of the DAH for *Illex* squid had been harvested and closed the directed fishery for *Illex* squid (63 FR 45763, August 27, 1998). An incidental catch trip limit of 5,000 lb (2.27 mt) was then instituted for all vessels issued Federal permits for *Illex* squid. Since the closure, the landings of *Illex* squid have exceeded 100 percent of the DAH for *Illex* squid. Therefore, a closure mechanism was included in the proposed rule. However, at the December 1998 Council meeting, members expressed concern about implementing an incidental closure mechanism with the annual specifications. The Council strongly urged NMFS to allow an incidental level of landings throughout the year because these species are commonly caught in the prosecution of other fisheries. It noted specifically that *Illex* is frequently caught incidental to the fall *Loligo* fishery. NMFS has subsequently eliminated the proposed closure from the final rule. NMFS believes that, if necessary, in future years the fishery can be constrained to the allowed harvest level by adjusting the percentage level that triggers the closure of the directed fishery (currently 95 percent).

Comments and Responses

Three comments were received on the proposed specifications from the Council and from two industry participants:

Comment 1: Both industry participants suggested a revision to the components of Atlantic mackerel DAH that would reduce DAH from 75,000 mt to 70,000 mt. In the proposed rule, DAH is composed of 15,000 mt for the recreational fishery, 50,000 mt for DAP, and 10,000 mt for JVP. The commentors proposed instead to specify 70,000 mt DAH consisting of 15,000 mt for the recreational fishery, 30,000 mt for DAP and 25,000 mt for JVP. The commentors noted that processors in past years have not attained the DAP levels estimated by the Council. They also proposed allocation of 10,000 mt of TALFF to provide a directed fishing incentive to foreign vessels considering joint ventures.

Response: These proposals go beyond any measures discussed by the Council. This suggestion could negatively affect U.S. processing and exports by infringing on markets currently engaged by domestic processors. NMFS believes adjusting JVP by in-season action could provide another opportunity for U.S. vessels to participate in joint ventures without any negative impacts on the Council's long-term goal to Americanize the fishery. Section 802 of the Fisheries Act of 1995 (16 U.S.C. 1821n.) prohibits the Secretary of Commerce from specifying a TALFF unless the Council recommends a TALFF. The Council did not recommend a TALFF.

Comment 2: The Council commented in opposition to the proposal to authorize the Regional Administrator to close the incidental fisheries for the squids and butterfish when the DAH is attained. The Council members noted that the Council intended to allow the incidental fisheries to remain open after closure of the directed fisheries to allow for landings of squid or butterfish caught in other fisheries. The members also noted that closure of the incidental fisheries would pose a compliance problem for vessels that harvested small quantities of species incidental to other operations.

Response: NMFS has eliminated the proposed measure to close the incidental fisheries from this final rule in response to the Council concerns. As noted in the preamble of this rule and discussed by the Council at its December 1998 meeting, these fisheries can be constrained to specified harvest levels by adjusting the percentage level that triggers the closure of the directed fishery (currently 95 percent).

Comment 3: The Council commented in opposition to the provision to expedite the in-season adjustment of the specification for JVP.

Response: In its comment, the Council provided no additional rationale for its

opposition to this measure. NMFS has included the measure in the final specifications package because it sees no compelling reason not to do so. The in-season adjustment could provide another timely opportunity for U.S. vessels to participate in the fishery without any negative impacts on the Council's long-term goal to Americanize the fishery.

Classification

These final specifications are authorized by 50 CFR part 648 and comply with the National Environmental Policy Act.

This final rule has been determined to be not significant for purposes of E.O. 12866.

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Director, Office of Sustainable Fisheries, NMFS, notified the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it could have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis (IRFA) was prepared, as required by 603(a) of the RFA. Even though no comments were received on the IRFA, an FRFA was completed for this final rule because a thorough understanding of the economic impacts of this rule are important. A copy of the complete FRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**).

Summary of FRFA Conclusions

The FRFA assumes that all vessels prosecuting these fisheries would be impacted by these quota specifications. Therefore, the substantial number (greater than 20 percent) criteria would be met. For *Loligo* squid, butterfish, and Atlantic mackerel, gross revenues are not expected to decrease as a consequence of this action. In 1997, *Loligo* squid landings were 16,203 mt. The final IOY specification for *Loligo* squid in 1999 is 21,000 mt. In 1997, butterfish landings were 2,797 mt. The final IOY specification for butterfish in 1999 is 5,900 mt. In the case of Atlantic mackerel, the 1999 IOY was reduced from 80,000 mt in 1998 to the final level of 75,000 mt in 1999. Both specifications for mackerel exceed recent harvest in the 1997 fishery of 15,406 mt. In addition, the reduction in IOY in 1999 is due to a reduction in the JV specification by 5,000 mt. The only JV activity in recent years was in 1998, when the joint venture operation was not able to harvest the entire venture allocation of 10,000 mt. Therefore, the FRFA concluded that the proposed reduction in the initial JV specification should not affect revenues in the fishery. In addition, the measure to allow an in-season increase in the specification would moderate any unanticipated affects.

The final ABC specification for *Illex* squid in 1999 is 19,000 mt. In past years, a surplus existed between the 1998 ABC specification and what has been landed. However, due to over-harvesting in 1998, 22,585 mt of *Illex* squid have been harvested as of September 1998. This means that the 1999 proposal equates to a decrease of 7.9 million lb (3,585 mt) from 1998, valued at $1.975 million. The Council's Amendment 5 document indicates that the directed fishery accounts for 99.7 percent of the total landings, meaning that $1,969,000 of the revenue associated with the quota overage would be attributed to moratorium vessels and only $6,000 to incidental catch vessels. According to 1998 NMFS permit records, 75 vessels hold *Illex* squid moratorium permits and 64 had *Illex* squid landings in 1998; 1,504 hold incidental catch permits. This would mean that each moratorium vessel could have revenue losses of $31,000 and each incidental catch vessel would have negligible revenue losses.

This raises the question of the level of impact on the moratorium vessels. When dividing the 1998 overage value of $1.975 million by the 64 moratorium vessels, this leads to an ex-vessel price of $551 per mt. Multiplying that value by the total harvest in 1998 of 22,585 mt of *Illex* leads to revenues of $12,444,335. When divided by the 64 moratorium vessels this leads to $195,000. Dividing the revenue losses of $31,000 of each moratorium vessel by this value equates to a 16-percent loss in average gross revenues. The RFA requires alternatives to be considered to moderate the impact on small entities. As noted, the specifications for all species except *Illex* allow for an increase in landings by affected small entities. However, the *Illex* specification represents a decrease in landings from the 1998 level. Any alternative to moderate this impact would result in overfishing of the *Illex* stock. This may sacrifice long-term returns from the resource for short term economic benefits. Concomitantly, such action conflicts with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Therefore, over-harvest cannot be allowed to continue despite the obvious benefits of higher landings.

Because this rule only establishes year-long quotas to be used for the sole purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulated entity must come into compliance, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(3), finds for good cause that a delay in the effective date of the final initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish is unnecessary.

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

Dated: January 4, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–331 Filed 1–4–99; 5:11 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 5
Friday, January 8, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–19]

Proposed Establishment of Class D Airspace and Modification of Class E Airspace; Bozeman, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NRPM).

SUMMARY: This proposal would establish the Bozeman, MT, Class D surface area airspace to accommodate the procedures associated with the operation of a proposed Airport Traffic Control Tower (ATCT) at Gallatin Field, Bozeman, MT. This proposal would also change the Class E surface area from continuous status to part-time in conjunction with the establishment of the part-time Class D area.

DATES: Comments must be received on or before February 22, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–19, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6. Federal Aviation Administration, Docket No. 98–ANM–19, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ANM–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment of Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class D airspace and modifying Class E airspace at Bozeman, MT. This amendment would provide Class D airspace to be used with the proposed establishment of an ATCT at Gallatin Field. The Class E surface area would have modified hours, to be effective when the ATCT is closed. The FAA establishes Class D and E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at Gallatin Field and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace and Class E surface airspace areas are published Paragraph 5000 and Paragraph 6002, respectively, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 General

* * * * *

ANM MT D Bozeman, MT [New]

Bozeman, Gallatin Field, MT
(Lat. 45°46′37″ N, long. 111°09′11″ W)
Bozeman ILS Localizer
(Lat. 45°46′01″ N, long. 111°08′13″ W)

Within a 44-mile radius of Gallatin Field, and within 3 miles each side of the Bozeman ILS northwest localizer course extending from the 4.4-mile radius to 14 miles northwest of Gallatin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

ANM MT E2 Bozeman, MT [Revised]

Bozeman, Gallatin Field, MT
(Lat. 45°46′37″ N, long. 111°09′11″ W)
Bozeman ILS Localizer
(Lat. 45°46′01″ N, long. 111°08′13″ W)

Within a 4.4-mile radius of Gallatin Field, and within 3 miles each side of the Bozeman ILS northwest localizer course extending from the 4.4-mile radius to 14 miles northwest of Gallatin Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Seattle, Wash, on December 15, 1998.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–385 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114664–97]

RIN 1545–AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to various existing final regulations concerning the low-income housing tax credit including the procedures for compliance monitoring by state and local housing agencies (Agencies), the requirements for making carryover allocations, and the rules for Agencies' correction of administrative errors or omissions. In addition, regulations are being proposed involving the independent verification of information on sources and uses of funds submitted by taxpayers to Agencies. These amendments and proposed regulations affect owners of low-income housing projects who have claimed the credit and the Agencies who administer the credit. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by May 6, 1999. Outlines of topics to be discussed at the public hearing scheduled for May 27, 1999, must be received by April 8, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–114664–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–114664–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Paul Handleman, (202) 622–3040; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in §§ 1.42–5 and 1.42–13 previously have been reviewed and approved by the Office of Management and Budget for review under control numbers 1545–1291 and 1545–1357, respectively; all of these paperwork requirements will be consolidated under control number 1545–1357. The new collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by March 9, 1999.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The requirement for the collections of information in this notice of proposed rulemaking is in §§ 1.42–5, 1.42–13, and 1.42–17. The information is required by the IRS to verify compliance with the requirements of section 42. The collections of information are mandatory. The likely respondents/recordkeepers are individuals, state and local governments, businesses or other

for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual reporting and recordkeeping burden for § 1.42–5: 102,500 hours. For § 1.42–5, the estimated annual burden per respondent varies from .5 hour to 3 hours for taxpayers and 250 to 5,000 hours for Agencies, with an estimated average of 1 hour for taxpayers and 1,500 hours for Agencies.

Estimated number of respondents for § 1.42–5 : 20,000 taxpayers and 55 Agencies.

Estimated total annual reporting and recordkeeping burden for § 1.42–13: 289 hours. For § 1.42–13, the estimated annual burden per respondent varies from .5 hour to 10 hours for taxpayers and Agencies, with an estimated average of 3.5 hours for taxpayers and 3 hours for Agencies.

Estimated number of respondents for § 1.42–13: 43 taxpayers and 43 Agencies.

Estimated total annual reporting and recordkeeping burden for § 1.42–17: 2,110 hours. For § 1.42–17, the estimated annual burden per respondent varies from .5 hour to 2 hours for taxpayers and .5 hour to 5 hours for Agencies, with an estimated average of 1 hour for taxpayers and 2 hours for Agencies.

Estimated number of respondents for § 1.42–17: 2,000 taxpayers and 55 Agencies.

Estimated annual frequency of responses: once a year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On March 28, 1997, the General Accounting Office (GAO) submitted a report to Congress, ''Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program,'' (GAO/GGD/RCED–97–55), recommending certain revisions to existing Agency procedures for compliance with the low-income housing credit and requirements under qualified allocation plans for verifying taxpayers' sources and uses of funds for low-income housing projects. Consistent with these proposals, the proposed regulations amend existing regulation § 1.42–5 to require Agencies: (i) to report annually their compliance monitoring activities to the IRS; (ii) to conduct on-site habitability inspections of low-income housing projects; and (iii) to review local government reports on building code violations. In addition, the proposed regulations provide that qualified allocation plans require taxpayers to submit independent verification on sources and uses of funds for low-income projects.

The proposed regulations also contain amendments to the Income Tax Regulations (26 CFR part 1) including § 1.42–6 (carryover allocations), § 1.42–11 (provision of services), § 1.42–12 (effective dates and transitional rules), and § 1.42–13 (correction of administrative errors and omissions) that are issued under the authority granted by section 42(n).

Explanation of Provisions

Compliance Monitoring

Section 42(m)(1)(B)(iii) provides that an allocation plan is not qualified unless it contains a procedure that the Agency (or an agent of, or private contractor hired by, the Agency) will follow in monitoring compliance with the provisions of section 42. The Agency is to notify the IRS of any noncompliance of which the Agency becomes aware.

Section 42(m)(1)(B)(iii) is effective on January 1, 1992, and applies to all buildings for which the low-income housing credit determined under section 42 is, or has been, allowable at any time. Allocation plans must have complied with the requirements of § 1.42–5 by June 30, 1993. Section 42(m)(1)(B)(iii) and § 1.42–5 do not require monitoring for whether a low-income housing project is in compliance with the requirements of section 42 prior to January 1, 1992. However, if an Agency becomes aware of noncompliance that occurred prior to January 1, 1992, the Agency is required to notify the IRS of that noncompliance.

The current compliance monitoring regulations require an Agency, at a minimum, to review tenant income certifications and rent charges of projects using one of the following three monitoring options: (1) Review the owners' annual income certifications, including the documentation supporting the certifications for at least 50 percent of the Agency's low-income projects, and tenant rent records in at least 20 percent of the low-income units in these projects; (2) make annual on-site inspections of at least 20 percent of the projects, and review the low-income certification, the documentation supporting the certification, and rent record for each tenant in at least 20 percent of the low-income units in those projects; or (3) obtain from all project owners tenant income and rent records for each low-income unit and, for at least 20 percent of the projects, review the annual tenant income certification, backup income documentation, and rent record for each low-income tenant in at least 20 percent of the low-income units in those projects.

The GAO report recommended that an Agency conduct regular on-site inspections of projects and obtain building code inspection reports performed by the local government unit. The GAO found that desk audits (monitoring options 1 and 3 above) failed to detect violations involving the physical condition of buildings. In addition, site visits allow an Agency to directly assess the compliance status of projects and the physical condition of buildings. Consistent with these proposals, the proposed regulations remove the three monitoring options and require, at least once every three (3) years, that each Agency conduct on-site inspections of all buildings in each low-income housing project and, for each tenant in at least 20 percent of the project's low-income units selected by the Agency, review the low-income certification, the documentation supporting such certification, and the rent record. The proposed regulations also require, at a minimum, by the end of the calendar year following the year the last building in a project is placed in service, that the Agency conduct on-site inspections of the projects and review the low-income certification, the documentation supporting such certification, and the rent record for each tenant in the project. As part of the inspection requirements, the proposed regulations also require the Agency to determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes. Agencies may delegate this determination only to a state or local government unit responsible for making building code inspections. The three-year inspection requirement is proposed to be effective on the date the final regulations are published in the **Federal Register**. The placed-in-service year inspection requirement is proposed to be effective for buildings placed in service on or after the date the final regulations are published in the **Federal Register**.

The current compliance monitoring regulations require the owner of a project, at a minimum, to certify annually that for the preceding 12-

month period each building in the project was suitable for occupancy, taking into account local health, safety, and building codes. Based on the GAO recommendation, the proposed regulations revise this certification by also requiring the owner of the project to certify that for the preceding 12-month period the state or local government unit responsible for making building code inspections did not issue a report of a violation for the project. If the governmental unit issued a report of a violation, the owner will be required to attach a copy of the report of the violation to the annual certification submitted to the Agency.

The proposed regulations also adopt the GAO recommendation that Agencies report annually to the IRS on compliance monitoring activities. It is anticipated Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' will be revised to require an Agency to confirm annually that it has satisfied the new compliance monitoring requirements involving: (1) the once every three-year on-site inspections and review of the low-income certification, the documentation supporting such certification, and the rent record for each tenant in at least 20 percent of the low-income units selected by the Agency; and (2) the on-site inspections relating to the placed-in-service year and review of the low-income certification, the documentation supporting such certification, and the rent record for each low-income tenant in the project.

The current compliance monitoring regulations require Agencies to report a correction of noncompliance or failure to certify if the correction occurs within the correction period defined in § 1.42–5(e)(4). The proposed regulations clarify that the Agency is required to file Form 8823, ''Low-Income Housing Credit Agencies Report of Noncompliance,'' with the IRS reporting the correction of the noncompliance or failure to certify regardless of when the correction occurs during the compliance period. This requirement is proposed to be effective on the date the final regulations are published in the **Federal Register**.

Sources and Uses of Funds

The GAO report recommended that IRS regulations be amended to establish clear requirements to ensure independent verification of taxpayer's key information on sources and uses of funds submitted to an Agency. Without assurance of reliable and complete cost and financing information, Agencies are vulnerable to providing more (or fewer) tax credits to projects than are actually needed. Under section 42(m)(2)(A), the housing credit dollar amount allocated to a project should not exceed the amount the Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, section 42(m)(2)(B) requires that the Agency must consider: (i) the sources and uses of funds and the total financing planned for the project, (ii) any proceeds or receipts expected to be generated by reason of tax benefits, (iii) the percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries, and (iv) the reasonableness of the developmental and operational costs of the project. The requirement in section 42(m)(2)(B)(iii) is not to be applied so as to impede the development of projects in hard-to-develop areas.

In its report, the GAO determined that an Agency must make three critical judgments in awarding credits: (1) The reasonableness of developer costs because the Agency is to award no more credits to a project than a specified percentage of certain Agency-approved project development costs; (2) the reasonableness of the financing arrangements for the project because the Agency is required to base an award of credit on the financial need of a project subject to the limit computed on Agency-approved development costs; and (3) criteria for pricing the credit (for example, use of an appropriate rate to convert credits into an equity investment amount).

So that an Agency may more accurately determine the amount of credits to be awarded, the GAO proposed three alternative recommendations: (1) an examination or audit, which would provide a reasonable basis for an independent public accountant to issue an opinion on the overall reliability of a project's financial information taken as a whole; (2) a review, which would consist of inquiries and application of analytical procedures that might bring to the accountant's attention significant matters affecting a project's financial information but would not provide assurance that the accountant would become aware of all significant matters that would be disclosed in an audit; or (3) agreed-upon procedures, which would provide an accountant with a basis to issue a report of findings based on the specified procedures but not a basis to issue an opinion on the reliability of the financial information.

Because the first alternative provides the most reliable independent verification on sources and uses of funds, the proposed regulations require that a taxpayer must obtain an opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications provided by the taxpayer to the Agency, including the costs that may qualify for inclusion in eligible basis under section 42(d) and the amount of the credit under section 42. This opinion must be submitted to the Agency before the Agency issues the Form 8609, ''Low-Income Housing Credit Allocation Certification.'' This requirement is proposed to be effective on the date the final regulations are published in the **Federal Register**.

Buildings Qualifying for Carryover Allocations

The proposed regulations amend the carryover allocation regulations by requiring the Agency to file a form (to be prescribed by the IRS) that summarizes the carryover allocation document described in § 1.42–6(d)(2) with the Agency's Form 8610 for the year the allocation is made. The new form will be filed with the Form 8610 in lieu of the original carryover allocation document. Taxpayers must continue to file a copy of the carryover allocation document with the Form 8609 for the building for the first year the credit is claimed.

Correction of Administrative Errors and Omissions

Housing credit agencies may correct administrative errors and omissions with respect to allocations and recordkeeping if the correction occurs within a reasonable period of time after discovery of the error or omission. The current administrative error and omission regulations define an administrative error or omission as a mistake that results in a document that inaccurately reflects the intent of the Agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the Agency and the affected taxpayer at the time the document is originally completed. However, an administrative error or omission does not include a misinterpretation of the applicable rules and regulations under section 42. Agencies must obtain prior approval from the Secretary to correct an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction: (1) is a numerical change to the housing credit dollar amount allocated for the building or project; (2) affects the determination of any component of the state's housing

credit ceiling under section 42(h)(3)(C); or (3) affects the state's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

The proposed regulations would provide automatic approval for correcting an administrative error or omission in an allocation document (a Form 8609, or a carryover allocation document under the requirements of section 42(h)(1)(E) or (F) and § 1.42–6(d)(2)) that either did not accurately reflect the number of buildings constructed by the affected taxpayer, or transposed the information for one or more buildings with other buildings in a project.

If the automatic approval provision applies to the administrative error or omission, the proposed regulations require the Agency to amend the allocation document. If correcting the administrative error or omission requires adding a Building Identification Number (B.I.N.) to the amended allocation document, the proposed regulations require that the Agency must include any B.I.N.(s) already existing for the buildings in the document and, if possible, number the additional B.I.N.(s) sequentially from the existing B.I.N.(s). In addition, the Agency must file the amended allocation document with an amended Form 8610. This provision is proposed to be effective on the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Furthermore, an Agency is not a ''small entity'' for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 27, 1999, at 10 a.m. in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written and electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 8, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.42–17 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–5 is amended by:

1. Revising paragraphs (c)(1)(v), (c)(1)(vi) and (c)(2)(ii).

2. Removing the language ''If a monitoring procedure includes the review provision described in paragraph (c)(2)(ii)(B) of this section, the'' from the second sentence in paragraph (c)(2)(iii) and adding ''The'' in its place.

3. Removing the language ''paragraph (c)(2)(ii)(A), (B), and (C) of this section'' from the first sentence in paragraph (c)(4)(i) and adding ''paragraph (c)(2)(ii) of this section'' in its place.

4. Removing the language ''An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are'' from the first sentence in the example in paragraph (c)(4)(iii) and adding ''An Agency selects for review'' in its place.

5. Adding paragraph (c)(5).

6. Revising the last sentence in paragraph (d).

7. Removing the language ''(c)(2)(ii)(A), (B), or (C) of this section (whichever is applicable)'' from paragraph (e)(2) and adding the language ''(c)(2)(ii) of this section'' in its place.

8. Adding a sentence at the end of paragraph (e)(3)(i).

9. Removing the language ''paragraph (e)(3) of this section'' in the third sentence in paragraph (f)(1)(i) and adding ''paragraphs (c)(5) and (e)(3) of this section'' in its place.

10. Adding two sentences at the end of paragraph (h).

The revisions and additions read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(c) * * *

(1) * * *

(v) All units in the project were for use by the general public (as defined in § 1.42–9) and used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv));

(vi) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes, and the State or local government unit responsible for making

building code inspections did not issue a report of a violation for any building in the project. If a report of a violation was issued by the governmental unit, the owner must attach a copy of the report of the violation to the annual certification submitted to the Agency under paragraph (c)(1) of this section;

(2) * * *

(ii) Require that with respect to each low-income housing project—

(A) The Agency conduct on-site inspections of all buildings in the project by the end of the calendar year following the year the last building in the project is placed in service and review the low-income certification, the documentation supporting such certification, and the rent record for each low-income tenant; and

(B) At least once every three (3) years, the Agency conduct on-site inspections of all buildings in the project, and, for each tenant in at least 20 percent of the project's low-income units selected by the Agency, review the low-income certification, the documentation supporting such certification, and the rent record; and

* * * * *

(5) *Agency reports of compliance monitoring activities.* The Agency must report its compliance monitoring activities annually on Form 8610, ''Annual Low-Income Housing Credit Agencies Report.''

(d) * * * In addition, in connection with the on-site inspections required by paragraph (c)(2)(ii) of this section, the Agency must determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes. Notwithstanding paragraph (f) of this section, this determination may be delegated only to a State or local government unit responsible for making building code inspections.

(e) * * *

(3) * * *

(i) * * * For noncompliance or failure to certify that is corrected after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify regardless of when the correction occurs during the 15-year compliance period under section 42(i)(1).

* * * * *

(h) * * * In addition, the requirement in paragraph (c)(2)(ii)(A) of this section (involving on-site inspections relating to the placed-in-service year and review of the low-income certifications, the documentation supporting such certifications, and the rent records) is effective for buildings placed in service on or after the date the final regulations are published in the **Federal Register**. The requirements in paragraph (c)(1)(vi) of this section (involving whether a State or local government unit responsible for making building code inspections issued a report or a violation for the project), paragraph (c)(2)(ii)(B) of this section (the low-income certifications, the documentation supporting such certifications, and the rent records), paragraph (c)(5) of this section (involving the requirement to report the Agency's compliance monitoring activities to the Service), paragraph (d) of this section (involving habitability requirements), and paragraph (e)(3) of this section (involving the requirement to report corrected noncompliance or failure to certify after the end of the correction period) are effective on the date the final regulations are published in the **Federal Register**.

Par. 3. Section 1.42–6 is amended by removing the first sentence in paragraph (d)(4)(ii) and adding two sentences in its place to read as follows:

§ 1.42–6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file the form (to be prescribed by the IRS) that summarizes the carryover allocation document. This form is filed with the Agency's Form 8610 that accounts for the year the allocation is made. * * *

* * * * *

Par. 4. Section 1.42–11 is amended by revising the last sentence in paragraph (b)(3)(ii)(A) to read as follows:

§ 1.42–11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

* * * * *

Par. 5. Section 1.42–12 is amended by adding paragraph (c) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

* * * * *

(c) The rule set forth in § 1.42–6(d)(4)(ii) relating to the requirement that state and local housing agencies file the form to be prescribed by the Internal Revenue Service that summarizes the carryover allocation document is effective for forms the due date of which are on or after the date that is 60 days after the date final regulations are published in the **Federal Register**.

Par. 6. Section 1.42–13 is amended by:

1. Revising the introductory text of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a sentence at the end of paragraph (d).

The revisions and additions read as follows:

§ 1.42–13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

* * * * *

(b) * * *

(3) * * *

(iii) *Secretary's prior approval required.* Except as provided in paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

* * * * *

(vi) *Secretary's automatic approval.* The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if—

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, ''Low-Income Housing Credit Allocation Certification,'' or the allocation document under the requirements of section 42(h)(1)(E) or (F) and § 1.42–6(d)(2)) that either did not accurately reflect the number of buildings constructed by the affected taxpayer (for example, the affected taxpayer built 10 buildings instead of 8 buildings having the same total number of units), or transposed the information for one or more buildings with other buildings in the multiple-building project;

(C) The administrative error or omission does not affect the Agency's ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project;

(D) The Agency corrects the administrative error or omission no later than one year after the building(s) were placed in service by the affected taxpayer; and

(E) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) *How Agency corrects errors or omissions subject to automatic approval.* An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by—

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the ''correction under § 1.42–13(b)(3)(vii)''. If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for the buildings. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the form to be prescribed by the Service that summarizes the allocation document (see § 1.42–6 (d)(4)(ii)) and attaching a copy of this form to an amended Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' for the year the allocation was made. The Agency will indicate on the forms that it is making the ''correction under § 1.42–13(b)(3)(vii)'';

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to an amended Form 8610 for either the year the allocation was made or the year the building was placed in service by the affected taxpayer. The Agency will indicate on the forms that it is making the ''correction under § 1.42–13(b)(3)(vii)'';

(D) Filing the amended Form 8610 with the Service. When completing the amended Form 8610, the Agency should follow the specific instructions for the Form 8610 under the heading ''Amended Report''; and

(E) Mailing a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) *Other approval procedures.* The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective on the date the final regulations are published in the **Federal Register**.

Par. 7. Section 1.42–17 is added to read as follows:

§ 1.42–17 Qualified Allocation Plan.

(a) *Requirements*—(1) *In general.* [Reserved]

(2) *Selection criteria.* [Reserved]

(3) *Agency evaluation.* Section 42(m)(2)(A) requires that the housing credit dollar amount allocated to a project should not exceed the amount the Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, the Agency must consider—

(i) The sources and uses of funds and the total financing planned for the project. The taxpayer must certify to the Agency the full extent of all federal, state, and local subsidies that apply (or which the taxpayer expects to apply) to the project. The taxpayer must also certify to the Agency all other sources of funds and all development costs for the project. The taxpayer's certification should be sufficiently detailed to enable the Agency to ascertain the nature of the costs that will comprise the total financing package, including subsidies and the anticipated syndication or placement proceeds to be raised. Development cost information, whether or not includible in eligible basis under section 42(d), that should be provided to the Agency includes, but is not limited to, site acquisition costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, developer fees, and other costs;

(ii) Any proceeds or receipts expected to be generated by reason of tax benefits;

(iii) The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries. This requirement should not be applied so as to impede the development of projects in hard-to-develop areas under section 42(d)(5)(C); and

(iv) The reasonableness of the developmental and operational costs of the project.

(4) *Timing of Agency evaluation.* The financial determinations and certifications required under paragraph (a)(3) of this section must be made at each of the following times:

(i) The time of the application for the housing credit dollar amount.

(ii) The time of the allocation of the housing credit dollar amount.

(iii) The date the building is placed in service.

(iv) After the building is placed in service, and before the Agency issues the Form 8609, ''Low-Income Housing Credit Allocation Certification.''

(5) *Special rule for final determinations and certifications.* For the Agency's evaluation under paragraph (a)(4)(iv) of this section, the taxpayer must obtain an opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications in paragraphs (a)(3)(i) through (iii) of this section, including the costs that may qualify for inclusion in eligible basis under section 42(d) and amount of the credit under section 42.

(6) *Bond financed projects.* A project qualifying under section 42(h)(4) is not entitled to any credit unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued), or the Agency responsible for issuing the Form(s) 8609 to the project, makes determinations under rules similar to the rules in paragraphs (a)(3), (4), and (5) of this section.

(b) *Effective date.* This section is effective on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–174 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–102023–98]

RIN 1545–AW14

Partnership Returns Required on Magnetic Media; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that relate to the requirements for filing partnership returns on magnetic media.

DATES: The public hearing originally scheduled for Wednesday, January 13, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, October 23, 1998 (63 FR 56878), announced that a public hearing was scheduled for Wednesday, January 13, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6011(e) of the Internal Revenue Code. The request to speak comment period for these proposed regulations expired on Wednesday, December 23, 1998.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of January 4, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, January 13, 1999, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–408 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Chapter II

RIN 1505–AA74

Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers

AGENCY: Fiscal Service, Treasury.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Debt Collection Improvement Act of 1996 (the ''Act'') requires that, subject to waiver, all federal payments (other than tax payments) made after January 1, 1999 shall be made by electronic funds transfer (''EFT''). It also mandates that the Secretary of the Treasury (''Treasury'') ensure that individuals required by the Act to receive their payments electronically have an account at a financial institution, with access to such an account at a reasonable cost and with the same consumer protections with respect to the account as other account holders at the same institution. Treasury has issued a rule implementing the Act. Treasury is also designing an electronic transfer account (''ETA SM'') for which any individual who receives a federal benefit, wage, salary, or retirement payment shall be eligible, and that may be offered by any federally-insured financial institution that enters into an ETA SM Financial Agency Agreement with Treasury; Treasury has asked for public comment on the proposed ETA SM.

Separately, certain financial institutions have entered into arrangements with nondepository payment service providers, such as check cashers, currency dealers and exchangers, and money transmitters, whereby recipients of electronic federal payments deposited into a non-ETA SM account at the financial institution may gain access to these payments through payment service providers. These service providers are not themselves eligible to maintain deposit accounts or to receive electronic deposits directly from the government. Treasury is seeking comment on whether it should propose regulations regarding these arrangements, and if so, what the content of such regulations should be.

DATES: Written comments are encouraged and must be received on or before April 8, 1999.

ADDRESSES: Comments should be mailed to the Office of the Fiscal Assistant Secretary, U.S. Department of the Treasury, Room 2112, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Comments received on this ANPRM will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To make an appointment to inspect comments, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Roger Bezdek, Senior Advisor for Fiscal Management, Office of the Fiscal Assistant Secretary, at (202) 622–1807; or Gary Sutton, Senior Counsel, Office of the General Counsel, at (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31001(x) of the Act requires that all federal payments [1] made after January 1, 1999 be made by EFT, unless Treasury grants a waiver. The Act further mandates that Treasury ensure that all individuals required by the Act to receive their payments electronically have an account at a financial institution, with access to such an account at a reasonable cost and with the same consumer protections with respect to the account as other account holders at the same institution. Treasury's final rule implementing this mandate, 31 CFR Part 208 (''Part 208''), provides that any individual who receives a federal benefit, wage, salary, or retirement payment shall be eligible to open an ETA SM, and that the ETA SM may be offered by any federally-insured financial institution that enters into an ETA SM Financial Agency Agreement with Treasury.[2]

At this time, more than two-thirds of federal payment recipients receive their payments electronically, primarily by Direct Deposit.[3] However, there are millions of recipients of federal payments that do not have an account at a financial institution and are therefore not positioned to receive their payments by Direct Deposit. Treasury is designing the ETA SM primarily to afford these recipients a safe, reliable, and economical means of accessing their federal electronic payments in compliance with the requirements of the Act. Treasury recently published a notice and request for comment regarding the proposed ETA SM (''ETA SM Notice'').[4] As is more fully described in the ETA SM Notice, the proposed ETA SM will:

- Be an individually owned account at a federally-insured financial institution,
- Be available to any individual who receives a federal benefit, wage, salary, or retirement Payment, regardless of whether the individual already has an account at a financial institution,
- Accept only federal electronic payments,

[1] The Act defines ''federal payments'' to include federal wage, salary, retirement, and benefit payments and vendor and expense reimbursement payments. Payments under the Internal Revenue Code of 1986 are excluded. 31 U.S.C. § 3332(j)(3) (Supp. 1998)

[2] 63 FR 51490 (Sept. 25, 1998). Part 208 generally defines ''financial institution'' as any ''insured bank,'' ''mutual savings bank,'' ''savings bank,'' or ''savings association,'' as each term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), any ''insured credit union'' as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), or any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101). 31 CFR § 208.2(k).

[3] Direct Deposit is the EFT payment mechanism by which federal payments are sent through the Automated Clearing House (ACH) system to an account at a financial institution established by the recipient. 31 CFR Part 210.

[4] 63 FR 64820 (Nov. 23, 1998).

- Permit a minimum of four withdrawals per month, included in the monthly fee, at the financial institution's offices and/or proprietary automated teller machines (''ATMs''), at the financial institution's option,
- Be subject to a maximum fee of $3.00 per month, and
- Provide the same consumer protections that are available to other account holders at the financial institution.

Financial institutions will be prohibited by Treasury's Financial Agency Agreement from entering into arrangements with nondepository payment service providers to provide access to ETAs SM. The ETA SM Notice also requests comment on three other features that are not currently part of the proposed ETA SM, to determine whether any or all should be added to the ETA SM at the option of the financial institution and at additional cost, if any, to the account holder: payment of interest on balances, allowing deposits of other electronic funds, and allowing ACH debit capability.

II. Payment Service Providers

The vast majority of financial institutions already offer Direct Deposit directly to federal payment recipients. Moreover, it is anticipated that many financial institutions will offer ETAs SM to recipients. In addition, however, in anticipation of the Act's EFT requirement, a number of financial institutions are offering or planning to offer Direct Deposit services that involve prearranged linkages with nondepository providers of financial services such as check cashers, currency dealers and exchangers, and money transmitters (''payment service providers'').[5] Payment service providers comprise a number of diverse businesses that vary greatly in size; they include large, publicly held companies that are in the business of providing money transfers, money orders, and related payment services on a nationwide basis, as well as small businesses that operate from a single location. Many of these businesses offer check cashing in conjunction with other financial products, such as ''payday loans.'' [6] Moreover, many such businesses may offer other nonfinancial products and services to the same customers (*e.g.*, as a convenience or grocery store or liquor store). However, a common element that these payment service providers share is that they are not subject to comprehensive federal regulation,[7] and are generally subject only to limited regulation, if any, at the state level.

These arrangements between financial institutions and payment service providers typically involve the establishment of an account in the name of the recipient at a financial institution into which the recipient's payment is deposited, followed by the transfer of the payment to a commingled account in the name of the payment service provider, and in which the recipient's interest may not be fully covered, if at all, by federal deposit insurance. The recipient then accesses the payment at an outlet of the payment service provider, where the recipient is given either cash or a check. Typically the recipient is charged an enrollment fee and a monthly fee for the service, and, if applicable, a check cashing fee. Although these arrangements vary considerably with respect to access to payments, fees charged, applicability of federal deposit insurance, and disclosures, customers of these services usually must access their payments through the payment service provider rather than directly through the depository institution that receives the Direct Deposit, must withdraw the entire amount of the federal payment rather than a portion thereof, and often must pay significant fees.

The following are descriptions of some arrangements between payment service providers and financial institutions, either in existence or under development, of which Treasury is aware:

- In one arrangement, the federal payments of recipients who enroll in the program are initially deposited into a federally insured account of the recipient at the participating financial institution. These payments are immediately transferred to a trust account at the financial institution that contains the federal payments of all recipients who enrolled at a particular check casher. A recipient's only means of accessing his funds is by obtaining a check at the check casher where the recipient enrolled, in the full amount of the federal payment. The recipient may then cash the check at the check casher or elsewhere. An enrollee may obtain a monthly statement at the check casher or by mail, at his option. The cost for the program is $1.60 per federal payment, plus a check cashing fee.
- A second arrangement establishes a federally insured account at a financial institution affiliated with the service provider for each recipient enrolled in the program. After the financial institution receives a federal payment and credits it to the recipient's account, the amount is immediately transferred to a pooled account at an unaffiliated financial institution in the name of the payment service provider, in which each recipient's interest is not federally insured. Recipients in the program may withdraw the amount of the federal payment (in full or in part) and check the available balance at any office of the payment service provider, as well as at any ATM included in a participating network. The charges for the program include a $4.00 enrollment fee, a $5.50 monthly maintenance fee, and a $1.00 fee for each withdrawal or balance inquiry.
- In a program being developed, a recipient could enroll at any check casher that is a member of a national trade association. The participating financial institution would establish a federally insured account subject to Regulation E [8] to receive each enrollee's federal EFT payment. The recipient could withdraw the amount of the federal payment (in full or in part) from his account at any participating check casher through a point-of-sale device, or at any ATM of the financial institution or of any participating network, but not at the financial institution's offices. The fees for the program would be determined by each check casher.

A number of concerns have been articulated regarding financial institutions entering into these kinds of arrangements with payment service providers, with respect to delivery of federal payments. The concerns include that these arrangements could result in recipients being charged excessive fees for accessing their electronic federal payments; that by participating in such arrangements, the recipients may lose the benefit of certain consumer

[5] Subject to limited exceptions, Part 208 requires that electronic Federal payments must be deposited into a financial institution account ''in the name of the recipient.'' The exceptions to this requirement are limited to payments to an ''authorized payment agent,'' which includes a representative payee or fiduciary under the regulations of the agency making the payment, or to an investment account established through a broker-dealer or investment company registered with the Securities and Exchange Commission. 31 CFR § 208.6. These types of entities are therefore not considered ''payment service providers'' in the context of this ANPRM.

[6] *See* ''The Growth of Legal Loan Sharking: A Report on the Payday Loan Industry,'' Consumer Federation of America, November 1998.

[7] Although not directly relevant to this ANPRM, Treasury's Financial Crimes Enforcement Network (FinCEN), in connection with its anti-money laundering program, has proposed regulations under the Bank Secrecy Act (''BSA'') requiring that ''money services businesses,'' a category that includes, among others, check cashers, currency dealers and exchangers, and money transmitters, register with FinCEN (as mandated by the BSA), and that certain of these businesses file reports of suspicious activities. 62 FR 27890, 27900 (May 21, 1997).

[8] 12 CFR Part 205.

protections, such as federal deposit insurance, that they would otherwise have as an account holder at the financial institution; and that recipients may not be adequately informed of the fees they may incur or the protections they may forego by entering into these arrangements. Some have pointed out that many payment service providers offer other products, such as short term, high rate advances known as ''payday loans,'' to their customers, that may subject them to substantial payments, fees, or other risks. Some have argued that, if the amount of the federal payment is immediately transferred out of the recipient's financial institution account into a payment service provider account, and the recipient cannot withdraw less than the entire amount of the federal payment from the account or maintain the account separately from the relationship with the service provider, then the recipient in fact may not have an ''account'' at a financial institution in any meaningful sense. Others have argued that, if the recipient cannot access his federal payment directly at the financial institution but may do so only at an outlet of the payment service provider, the recipient may not have ''access'' to an account at a financial institution. In addition, the arrangements in which the payment service provider prints its own check for the recipient are contrary to the goal of replacing paper checks with electronic payments. However, others have noted that payment service provider arrangements provide access to funds for recipients residing in areas underserved by banks and other financial institutions, including low and moderate income and rural areas.

As Treasury announced in the ETA℠ Notice,[9] a financial institution that offers the ETA℠ may not enter into arrangements whereby a recipient of an electronic federal payment may access an ETA℠ through a payment service provider. In addition, Treasury has urged the federal bank regulatory agencies to take steps to ensure that the institutions they regulate take responsibility for full and fair disclosure of all fees charged by the parties involved in arrangements whereby recipients access federal EFT payments deposited in non-ETA℠ accounts through payment service providers, as well as the legal relationships involved and the applicability of federal deposit insurance. Moreover, Treasury continues to explore ways to facilitate access to federal EFT payments in areas underserved by financial institutions; these include working with other public entities to expand ATM access in these areas.

However, some commenters have urged Treasury to go further, and also to regulate arrangements between financial institutions and payment service providers whereby a recipient of an electronic federal payment accesses a non-ETA℠ account at such a financial institution through a payment service provider, such as those described above. Treasury did not regulate these arrangements when it adopted Part 208, but noted in its adopting release that it would monitor their development.[10]

In light of the concerns regarding these arrangements described above, Treasury is considering whether rulemaking is necessary or appropriate with respect to such arrangements, and if so, what the content of such regulations should be. In considering these questions, Treasury is endeavoring to ensure that federal payment recipients have access to their funds at a reasonable cost and with the same consumer protections as other account holders at the same financial institution, to increase use of EFT for federal payments in order to reduce cost to the federal government, and to increase participation by federal payment recipients in the country's financial system.

III. Issues for Comment

Treasury is seeking comment on the following questions:

- Should Treasury regulate or prohibit arrangements between financial institutions and payment service providers in which electronic federal payments are deposited into a recipient's non-ETA℠ account at a financial institution but made available to the recipient through a payment service provider?
- Do such arrangements deny the recipient either: (a) an account at a financial institution, (b) access to such account, (c) access at a reasonable cost, or (d) the same consumer protections with respect to the account as other account holders at the same institution?
- Should all payment service providers be subject to regulation, or only a particular subset, and if only a subset, what is the basis for such distinction?

Commenters are asked to cite specific evidence supporting their position, *e.g.*, data showing that the fees charged recipients by payment service provider arrangements (either generally or with reference to specific types of payment service providers or specific recipients) are or are not reasonable; that specific consumer protections, such as federal deposit insurance or Regulation E coverage, are given or denied to such persons; or the extent to which the recipient may or may not have either an account at a financial institution, or access to such account, under such arrangements.

Treasury is also seeking comment with regard to the nature of any regulation that may be appropriate for payment service provider arrangements. As noted above, a range of suggestions have been made as options for Treasury to consider; these generally fall into two broad categories. Under one category, Treasury would generally prohibit arrangements between financial institutions and payment service providers whereby electronic federal payments received at such institution are accessed by the recipient through a payment service provider. For example, some have urged that Treasury could require all financial institutions that receive federal Direct Deposit payments for account holders to become Treasury Financial Agents and prohibit these kinds of arrangements with payment service providers in their Financial Agency Agreements. Alternatively, it has been suggested that, under certain circumstances, Treasury could adopt regulations that would prohibit financial institutions that receive Direct Deposit from entering into these kinds of arrangements with payment service providers.

Under the second broad category noted above, Treasury could promulgate rules to delineate further the requirements relating to financial institution accounts required by the Act for receipt of federal electronic payments. Treasury might approach this by establishing minimum requirements for the receipt of electronic federal payments by defining in a regulation terms such as ''account,'' ''access,'' ''reasonable cost,'' and ''consumer protection,'' in the context of the Act. For example, Treasury might determine that, for purposes of the Act, an ''account'' must have certain core attributes, which could include the ability of the account holder, at the account holder's option, to maintain the account and to retain a federal payment in the account, notwithstanding any arrangement with any third party, and to withdraw less than the entire amount of a federal payment made to the account. Similarly, Treasury might determine that, in order to have ''access'' to an account, for purposes of the Act, a recipient must be able to access the account at an office or ATM of the financial institution, notwithstanding any access that may

[9] 63 FR 64820, 64823 (Nov. 23, 1998).

[10] 63 FR 51490, 51498 (Sept. 25, 1998).

exist through a payment service provider. In addition, it is suggested that Treasury could use its rulemaking authority to determine a ''reasonable cost'' for a financial institution account, considering a variety of factors and circumstances. Finally, Treasury could determine that, to satisfy the ''consumer protection'' requirement of the Act, a financial institution must at least provide its recipients with federal deposit insurance (in the cases where the institution is federally insured) and the benefits of Regulation E.

Other options have also been suggested; these include the imposition by Treasury of enhanced disclosure obligations by financial institutions regarding the products being offered,[11] and the enactment of additional state or federal legislation regulating some or all payment service providers. Alternatively, some have suggested that, rather than focusing on the attributes of the financial institution account, regulations should be directed at ensuring that the aggregate fees that may be charged recipients of federal EFT payments are ''reasonable.''

Treasury invites comments on all the above options and suggestions as to how Treasury might implement them, as well as suggestions as to any other type of measure that the commenters believe would be appropriate for these arrangements, including any factual and legal bases therefor. Treasury also requests that any comments address the following issues: Should a suggested regulation be directed at all payment service providers, or limited to a particular subset, and if limited, what is the basis for making such a distinction? What effect would any such regulation have on the Direct Deposit program generally? How could such regulation be limited so as not to disrupt the many types of standard account arrangements, such as preauthorized debits, that are in wide use and do not give rise to the possible abuses that are the focus of this ANPRM? Would the prohibition or regulation of payment service provider arrangements limit or expand the ability of federal payment recipients to access their funds, if such measure would significantly impede or preclude the functioning of such arrangement? How would such regulation further Treasury's objectives, including helping federal payment recipients access federally insured depository institutions, reducing government costs, and improving the payment system?

It has been determined that this ANPRM does not constitute a ''significant regulatory action'' for purposes of E.O. 12866. Treasury specifically requests comments on the costs and benefits of the regulatory approaches discussed in this document, and the economic impact such approaches may have on small businesses.

Comments received in response to this ANPRM will be reviewed and considered by Treasury in preparation for possible further action in connection with the issues discussed herein.

This ANPRM is issued under the authority of 31 U.S.C. 321 and 3332.

Dated: January 4, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–354 Filed 1–7–99; 8:45 am]

BILLING CODE 4810–25–P

[11] As noted above, Treasury has already urged the federal bank regulators to endeavor to ensure that the banks they regulate take responsibility for full and fair disclosure of all fees charged by all the parties involved in these kinds of arrangements, the legal relationships involved, and the applicability of federal deposit insurance. Some have suggested that Treasury could amplify this request by adopting a regulation requiring such disclosure.

DEPARTMENT OF THE TREASURY

Customs Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Seized Asset and Case Tracking System (SEACATS) Treasury/ Customs .213 from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received no later than February 8, 1999.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Disclosure Law Branch, 1300 Pennsylvania Ave. NW., Washington, DC 20229. Comments will be available for inspection and copying at the Disclosure Law Branch, 1300 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ellen Mulvenna, Office of Information and Technology, U.S. Customs Service, (202) 927–0800.

SUPPLEMENTARY INFORMATION: This computerized database will permit the retrieval of information as part of a redesigned work process improving the way the Office of Information and Technology uses technology to maximize efficiency. The purpose of the newly proposed system of records is to provide Customs and the Treasury Executive Office of Asset Forfeiture with a comprehensive system for tracking seized and forfeited property, penalties and liquidated damages from case initiation to final resolution. The system includes investigative reports relating to seizures and other law enforcement matters. Authority for the system is provided by 5 U.S.C. 301; and Treasury Department Order No. 165, Revised, as amended. Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately in the **Federal Register** a notice of a system of records entitled Treasury/Customs .213 Seized Assets and Case Tracking System (SEACATS). This system of records will assist Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of: (a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the

system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs is proposing to exempt the Seized Asset and Case Tracking System (SEACATS) from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a(j)(2) and (k)(2).

General Exemption Under 5 U.S.C. 552a(j)(2)

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs proposes to exempt the Seized Asset and Case Tracking System (SEACATS) from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g).

Specific Exemptions Under 5 U.S.C. 552a(k)(2)

To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Seized Asset and Case Tracking System (SEACATS), the Commissioner of Customs exempts the Seized Asset and Case Tracking System (SEACATS) from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552(k)(2): 5 U.S.C. 552a(c)(3); (d)(1), (2), (3) and (4); (e)(1), (e)(4)(G), (H) and (I); and (f).

Reasons for Exemption Under 5 U.S.C. 552a(j)(2) and (k)(2)

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(e)(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Seized Asset and Case Tracking System (SEACATS) would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in the following subsection, access to such knowledge would impair the ability of the offices supplying information to the Office of Information and Technology to carry out their investigation, since individuals could take steps to avoid detection; inform associates that an investigation is in progress; learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Seized Asset and Case Tracking System (SEACATS) would compromise the ability of the Office of Information and Technology to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Seized Asset and Case Tracking System (SEACATS) would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures. Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the ability of the Office of Information and Technology to carry out its mandate. Furthermore, providing access to records contained in the Seized Asset and Case Tracking System (SEACATS) could reveal the identities of undercover law enforcement officials who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals. By compromising the law enforcement value of the Seized Asset and Case Tracking System (SEACATS) for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Information and Technology and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a (d)(2), (3), and (4), (e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the Seized Asset and Case Tracking System (SEACATS) from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Seized Asset and Case Tracking System (SEACATS).

(4) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would impair the ability of enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Seized Asset and Case Tracking System (SEACATS). Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or

apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Seized Asset and Case Tracking System (SEACATS) has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of Customs' information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(5) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the Seized Asset and Case Tracking System (SEACATS) from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Seized Asset and Case Tracking System (SEACATS).

(6) Under 5 U.S.C. 552a(e)(4)(I) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Seized Asset and Case Tracking System (SEACATS) could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain'' as defined in 5 U.S.C. 552a(a)(3) includes ''collect'' and ''disseminate.'' At the time that information is collected by the Customs Service, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Customs Service; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service investigation. The Customs Service therefore believes that it is appropriate to exempt the above cited system of records from the provisions of 5 U.S.C. 552a(e)(1).

(8) Under 5 U.S.C. 552a(e)(2) an agency is requested to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Seized Asset and Case Tracking System (SEACATS) would impair the ability to collate, analyze, and disseminate investigative intelligence and enforcement information. Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether the disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information and the effects on the individual of not providing all or part of the information. The Seized Asset and Case Tracking System (SEACATS) should be exempted from this provision to avoid impairing the ability of the Office of Information and Technology to collect and collate investigative intelligence and enforcement data. Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation. Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(10) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect''

and ''disseminate'', application of this provision to the Seized Asset and Case Tracking System (SEACATS) would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the ability of Customs to disseminate information from SEACATS pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Seized Asset and Case Tracking System (SEACATS) should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Seized Asset and Case Tracking System (SEACATS) is exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules exempt the Seized Asset and Case Tracking System (SEACATS), since there are civil remedies for failure to comply with provisions from which SEACATS is exempted. Exemption from this provision will also protect the Seized Asset and Case Tracking System from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence and law enforcement data.

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), 1.4 Treasury Department Regulations (31 CFR 1.4), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, DC.

After consideration of the comments received, notice will be given concerning the exempt status of the system of records. If the Department finally exempts as herein proposed, a conforming amendment to 31 CFR 1.36 will also be published.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 522 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order in paragraphs a.1. and b.1. under the heading UNITED STATES CUSTOMS SERVICE:

* * * * *

a. * * *

1. * * *

* * * * *

00.213—Seized Asset and Case Tracking System (SEACATS)

* * * * *

b. * * *

1. * * *

* * * * *

00.213—Seized Asset and Case Tracking System (SEACATS)

* * * * *

Dated: November 19, 1998.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99–355 Filed 1–7–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–032]

RIN 2115–AE47

Drawbridge Operation Regulations; Lake Champlain, NY and VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations for the US2 Bridge, mile 91.8, between South Hero Island and North Hero Island over Lake Champlain in Vermont. This change is proposed to relieve vehicular traffic congestion at the bridge due to frequent openings during the height of the boating season. It is expected that the proposed bridge operating regulations will better balance the needs of vehicular traffic and the needs of navigation during peak traffic hours.

DATES: Comments must be received by the Coast Guard on or before March 9, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Ma. 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–032) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register**.

Background

The US2 Bridge, mile 91.8, over Lake Champlain in Vermont, has a vertical clearance of 4.7 feet at mean high water and 9.7 feet at mean low water.

The current operating regulations published in both 33 CFR 117.993(b) and 117.797(b) require the bridge to open from May 15 through October 15, on signal from 7 a.m. to 9 p.m., on four hours advance notice from 9 p.m. to 7 a.m., and on twenty four hours advance notice from October 16 through May 14.

This published operating schedule, from May 15 to October 15, 7 a.m. to 9 p.m., was too disruptive on the great deal of vehicular traffic that used the US2 Bridge. Vehicular delay and congestion at the bridge due to openings was a significant problem. Several years ago, without the Coast Guard's knowledge, the bridge owner, Grand Isle County residents, and Grand Isle County mariners met to try to develop a bridge operating schedule that was less disruptive to vehicular traffic than the published regulations. The schedule developed at this meeting changed the May 15 to October 15 on call operating hours to 8 a.m. to 8 p.m. and restricted openings to on the hour and half-hour. The 4 hour advance notice period changed to 8 p.m. to 8 a.m., but the schedule for October 16 to May 14 remained the same. The bridge owner adopted the schedule and has operated the US2 Bridge under it for several years.

The Coast Guard recently learned that the US2 Bridge was not operating in accordance with the published requirements from May 15 to October 15 and directed the bridge owner to operate the bridge according to 33 CFR 117.993(b). After receiving the Coast Guard's direction to operate the US2 Bridge in accordance with 33 CFR 117.993(b), the bridge owner submitted a request to change the operating regulations to allow the bridge to operate in accordance with the schedule developed at the meeting.

Based upon bridge opening data, vehicle traffic counts, and that the bridge has been operating under the proposed schedule for several years without noted problems, the Coast Guard has determined that the proposed operating regulations balance the needs of navigation and vehicular traffic.

Openings on the Hour and Half Hour

The Coast Guard has determined that the change from immediate on signal openings to openings on the hour and half hour balances the needs of navigation and vehicular traffic. In 1998, from May 15 through October 15, 8 a.m. to 8 p.m., there were 1,125 openings with 2,917 boats passing through, for an average of 2.6 boats per opening. In 1997, during the same time period, there were 1,122 openings with 2,551 boats passing through, for an average of 2.3 boats per opening. This data suggests that if the bridge opened on signal versus on the hour and half hour, there could have been over 2,000 openings during those time periods. Restricting bridge openings from those time periods. Restricting bridge openings from on signal to on the hour and half hour effectively reduced the number of openings while it only added, at most, a 30 minute delay for boaters who requested an opening.

This restriction on openings has clear benefits to vehicular traffic because in May 1998, an average of 2,402 vehicles per day used the bridge from 8 a.m. to 8 p.m., and in July 1998, an average of 3,439 vehicles per day used the bridge from 8 a.m. to 8 p.m. Based on the above, the Coast Guard has determined that restricting bridge openings from on signal to on signal on the hour and half hour balances the needs of navigation and vehicular traffic.

Decrease in Operating Hours

The Coast Guard has determined that changing the on call operating hours from 7 a.m. to 9 p.m., May 15 through October 15, to 8 a.m. to 8 p.m., May 15 through October 15, balances the needs of navigation and vehicular traffic. The Coast Guard does not have relevant bridge log data from 7 a.m. to 8 a.m. and from 8 p.m. to 9 p.m. to help determine whether the proposed change is reasonable because the bridge has been operating from 8 a.m. to 8 p.m. over the past several years. However, based on an analysis of the bridge log data from 8 a.m. to 9 a.m. and from 7 p.m. to 8 p.m., the Coast Guard is confident that changing on call hours to 8 a.m. to 8 p.m. is reasonable.

In 1998, from May 15 through October 15, 8 a.m. to 8 p.m., there were 1,125 openings, and 1,064 of those openings (94.6%) occurred between 9 a.m. and 7 p.m. Similarly, in 1997 during the same periods, 96.2% of bridge openings occurred between 9 a.m. and 7 p.m. Based on the above data, the Coast Guard concludes the needs of navigation between 7 a.m. to 8 a.m. and 8 p.m. to 9 p.m. would also not be significant if the bridge operated under the current operating regulations.

Vehicular traffic will benefit from the proposed restriction on operating hours. In 1997 and 1998, over 150 vehicles per day used the bridge between 7 a.m. and 8 a.m., and over 130 vehicles per day used the bridge between 8 p.m. and 9 p.m. Relatively few bridge openings are requested during hours that there is significant vehicular traffic. Based on the above, the Coast Guard has determined it is reasonable to change the US2 Bridge's operating hours from 7 a.m. to 9 p.m., May 15 through October 15, to 8 a.m. to 8 p.m., May 15 through October 15.

The Coast Guard did consider leaving the bridge operating regulations unchanged. This alternative was rejected because openings could effectively double, based on average boats per opening, from what they were in 1997 and 1998 during hours when vehicle traffic is at its peak. Doubling the number of openings during peak traffic hours would have a substantial negative impact on vehicular traffic. The Coast Guard also realizes that the US2 Bridge has been operating over the past several years under this proposed operating schedule, and all indications lead the Coast Guard to believe that this proposed operating schedule balances the needs of navigation and vehicular traffic.

Discussion of Proposal

The Coast Guard proposes to change the Code of Federal Regulations by revising § 117.993(b) and § 117.797(b). The proposed hours of operation were determined as a result of discussions between the Vermont Agency of Transportation, Grand Isle County residents, and the mariners located in Grand Isle County.

The proposed change will allow the bridge to open on signal on the hour and half hour from May 15 through October 15 from 8 a.m. to 8 p.m., daily. From May 15 to October 15 from 8 p.m. to 8 a.m. the bridge shall open on signal after four hour advance notice is given by calling the number posted at the bridge. From October 16 to May 14 the bridge will open on signal after a 24 hour advance notice is given by calling the number posted at the bridge. This action is expected to help reduce traffic congestion created when the bridge opens on signal from May 15 to October 15.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be some minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has been operating unofficially on this proposed schedule for several years and the Coast Guard has not received any comments or complaints to date regarding this operating schedule for the bridge. The Coast Guard believes this proposed rule will promulgate a more balanced schedule of operation and still meet the needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this proposed rule.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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. Revise § 117.993(b) to read as follows:

§ 117.993 Lake Champlain.

* * * * *

(b) The draw of the US2 Bridge, mile 91.8, over Lake Champlain, between South Hero Island and North Hero Island, shall operate as follows:

(1) The draw shall open on signal on the hour and the half hour from May 15 through October 15 from 8 a.m. to 8 p.m. daily.

(2) The draw shall open on signal from May 15 through October 15 from 8 p.m. to 8 a.m. if at least four hours notice is given by calling the number posted at the bridge.

(3) The draw shall open on signal from October 16 through May 14 if at least twenty four hours notice is given by calling the number posted at the bridge.

* * * * *

3. Revise § 117.797(b) to read as follows:

§ 117.797 Lake Champlain.

* * * * *

(b) The draw of the US2 Bridge, mile 91.8, over Lake Champlain, between South Hero Island and North Hero Island, shall operate as follows:

(1) The draw shall open on signal on the hour and the half hour from May 15 through October 15 from 8 a.m. to 8 p.m. daily.

(2) The draw shall open on signal from May 15 through October 15 from 8 p.m. to 8 a.m. if at least four hours notice is given by calling the number posted at the bridge.

(3) The draw shall open on signal from October 16 through May 14 if at least twenty four hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: December 3, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–387 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300690A; FRL–6019–8]

RIN 2070–AC18

Certain Plant Regulators: Cytokinins, Auxins, Gibberellins, Ethylene, and Pelargonic Acid; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening and extending by 30 days the original 60–day comment period associated with its October 23, 1998, proposal (63 FR 56882) to establish exemptions from the requirement of a tolerance for residues of the active ingredients cytokinins, auxins, gibberellins, ethylene, and pelargonic acid in or on all food commodities, when used as plant regulators on plants, seeds, or cuttings and on all food commodities after harvest. EPA also proposed to remove any existing crop-specific tolerances and/or exemptions from the requirement of a tolerance for the subject active ingredients as well as considering such tolerances to be reassessed as required by the Food Quality Protection Act of 1996 (FQPA). EPA proposed the regulation on its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators. This 30–day extension is in response to requests from the public for additional time to comment on the Proposed Rule.

DATES: Comments, identified by the docket control number [OPP–300690A], must be received on or before February 8, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit I of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: 9th fl., Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703) 308–8263; e-mail: greenway.denise@epa.gov.

SUPPLEMENTARY INFORMATION: In the October 23, 1998, issue of the **Federal Register** (63 FR 56882)(FRL–6019–7) the Office of Pesticide Programs issued a Proposed Rule to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for the active ingredients cytokinins (specifically: aqueous extract of seaweed meal and kinetin); auxins (specifically: indole-3-acetic acid and indole-3-butyric acid); gibberellins [gibberellic acids (GA_3 and $GA_4 + GA_7$), and sodium or potassium gibberellate]; ethylene; and pelargonic acid, in or on all food commodities, when used as plant regulators on plants, seeds or cuttings and on all food commodities after harvest in accordance with good agricultural practices. EPA concurrently proposed the revision or revocation and removal of any existing crop-specific tolerances and/or exemptions from the requirement of tolerances for the listed active ingredients when used as plant regulators. In taking this action EPA will consider those tolerances and/or exemptions to be reassessed (Federal Food, Drug, and Cosmetic Act, 408(q) as amended by the FQPA of 1996). The 60–day comment period originally associated with the proposal, which expired on December 22, 1998, is being reopened and extended by 30 days in response to requests from the public for additional time to comment.

The Agency selected this group of plant regulators as the subject of the proposal due to their non-toxic mode of action, toxicity profile, low application rates, and the expectation that plant regulator uses will not significantly increase their intake above normally consumed levels. There are additional plant regulator active ingredients which may meet the selection criteria. The Agency may, in the future, propose a similar document addressing other candidate plant regulator active ingredients.

All of the subject active ingredients are currently registered plant regulators, with the exception of indole-3-acetic acid. The Agency discourages the establishment (or existence) of tolerances, or exemptions from the requirement of a tolerance, for active ingredients for which there are no registered pesticide products. Therefore, any Final Rule subsequent to the proposal will not include indole-3-acetic acid (a naturally occurring analog of indole-3-butyric acid) in the tolerance exemption for auxins, unless during the comment period specific requests that it be included are received. Such requests must document the intention of the commentor to promptly submit upon publication of the Final Rule an application to register a plant regulator product containing indole-3-acetic acid as an active ingredient.

The Agency made the proposal upon its own initiative to facilitate the addition of new crops, application rates, and uses to the labels of products containing the listed active ingredients when used as plant regulators. A plant regulator is defined by EPA as ''***any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof***'' (FIFRA sec. 2 (v)). Additionally, plant regulators are characterized by their low rates of application; high application rates of the same compounds often are herbicidal.

I. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300690A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300690A]. Electronic comments on this

proposed rule may be filed online at many Federal Depository Libraries.

II. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This action proposes exemptions from the tolerance requirement under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this proposed action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), 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. If the mandate is unfunded, EPA must provide 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 and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

List of Subjects in 40 CFR Part 180

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

Dated: December 29, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–429 Filed 1–7–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Parts 400 and 401

RIN 0970–AB83

Refugee Resettlement Program: Requirements for the Public/Private Partnership Program for Refugee Cash Assistance; and Refugee Medical Assistance

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend current requirements governing refugee cash assistance and refugee medical assistance and would establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies.

DATES: Comments must be received by March 9, 1999.

ADDRESSES: Comments should be addressed to Toyo A. Biddle, Director, Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

Agencies and organizations are requested to submit comments in duplicate. While we are soliciting comments on all aspects of the proposed rule, we would particularly appreciate your feedback on the time periods allowed for implementation.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4 p.m., except Federal holidays. Although we will not be able to acknowledge or respond to comments individually, in preparing the final rule, we will respond to comments in the preamble to the final rule.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, (202) 401–9250, or Barbara Chesnik, (202) 401–4558.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) to create a domestic refugee resettlement program to provide assistance and services to refugees resettling in the United States. With the enactment of this legislation, the Office of Refugee Resettlement (ORR) issued a series of regulations, at 45 CFR part 400, to establish comprehensive requirements for a State-administered Refugee Resettlement Program (RRP), beginning with the publication on September 9, 1980 (45 FR 59318) of a regulation governing State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841); grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures, published January 30, 1986 (51 FR 3904); cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463); and requirements for employability services, job search, employment, refugee medical assistance, refugee social services, targeted assistance services, and Federal funding for administrative costs, published June 28, 1995 (60 FR 33584).

Description of the Regulation

This proposed regulation establishes a new system for providing refugee cash assistance (RCA) to those refugees not eligible for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), changes the procedure for determining the financial eligibility of refugees for receipt of refugee medical assistance, and amends other policies.

During the period following World War II until the passage of the Refugee Act of l980, a variety of programs were funded by Congress and/or the private sector to assist newly arriving refugee groups. In authorizing and funding these programs for refugees, Congress continually demonstrated its recognition that special programs were needed to help refugees restart their lives in the U.S.

It is important to note that resettlement in the U.S. is the last stage of a much larger, world-wide humanitarian effort to aid victims of oppression and war. The U.S. participates and exercises its leadership in this effort by contributing to international relief and protection efforts, and also by offering resettlement to some refugees who have no other durable solution and who qualify for admission to the U.S. These refugees arrive from diverse backgrounds and parts of the world. However, what they all have in common, in addition to having had to seek refuge, is that they arrive with virtually no worldly possessions.

With the passage of the Refugee Act, Congress further underscored its belief that refugees need special assistance by authorizing an on-going program for providing assistance and services to all refugees after their arrival in the U.S. However, unlike U.S. welfare programs which assist the needy, the Refugee Act does not require that an income standard be met in order to receive this special refugee cash assistance, only that refugees register for and participate in programs to help them find employment. Congress provided the Office of Refugee Resettlement the latitude to structure the refugee program in accordance with the refugee situation at that time.

After passage of the Refugee Act of 1980, ORR chose to establish direct ties to the State-administered Aid to Families with Dependent Children (AFDC) program in order to ensure that cash assistance was available to newly-arrived refugees not categorically eligible for that program. ORR established the refugee cash assistance program (RCA) and required States to use the AFDC need and payment standards for the provision of RCA. The AFDC welfare system provided a nationally accessible structure which ensured that cash assistance was available to all refugees in a timely and equitable manner. ORR also established the refugee medical assistance program (RMA) modeled on the Medicaid program.

At that time, ORR received sufficient appropriations to allow States to provide needy refugees with refugee cash assistance and refugee medical assistance during a refugee's first 36 months in the U.S. In addition, some portion of the refugee population received assistance under the mainstream AFDC and Medicaid programs. ORR also reimbursed the State share of AFDC and Medicaid costs during a refugee's first 36 months.

In the intervening years, due to declining appropriations, ORR reduced the period of availability of RCA and RMA to refugees. At the present time, ORR reimburses States for 100 percent of their RCA and RMA costs during a refugee's first eight months. Refugees eligible for the TANF and Medicaid programs receive assistance under those programs; the costs of refugee TANF and Medicaid recipients are not included in the refugee appropriation.

With the passage of welfare reform legislation in 1996, two things have occurred which caused ORR to review the current system for providing RCA: (1) More refugee families have qualified for assistance through the TANF program than had previously qualified under the AFDC program, resulting in a smaller RCA program; and (2) States have expressed concerns about the administrative difficulties of maintaining a separate system based upon former AFDC rules to provide cash assistance for only 8 months to a small population of refugees.

With these two considerations in mind, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. The consultations were useful in helping us to identify certain issues and to gauge whether there was a general willingness and a suitable climate across the country in which to change the program.

We have concluded, based upon the consultations, that it is an opportune time to separate the link between the RCA program and the welfare/TANF system for the following reasons: (1) The current period of time for provision of cash assistance is shorter, requiring a simple, more integrated and direct approach to resettlement; and (2) the RCA population, comprised almost entirely of singles and couples without children or with adult children, is a smaller, more distinct population to serve.

The Refugee Act acknowledged the roles of both States and private voluntary agencies in resettlement and authorized the Director of ORR ''to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee * * *.'' This language provided ORR with statutory flexibility to deliver assistance through public or private means. We believe that the public/private program we propose more closely follows what Congress intended in passing the Refugee Act. The addition of a public/private program also provides States increased flexibility by offering another option for administering the RCA program.

The proposed regulation would establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies responsible for the initial

resettlement of refugees. Under the proposed program, States would enter into a public/private partnership by contracting with local resettlement agencies to administer both the provision of cash assistance and the services needed to help RCA recipients become employed and self-sufficient within the RCA eligibility period. The RMA program would continue to be administered by the States and would not be included in the public/private partnership program. In addition, assistance and services to refugees eligible for TANF would not be affected by the new public/private RCA program.

We believe a combined assistance and services program, administered outside the welfare system, makes programmatic sense for the RCA population. Placing responsibility for cash assistance and services with the resettlement agencies will result in a continuity of assistance to RCA-eligible refugees from initial resettlement to self-sufficiency. Currently, resettlement agencies are responsible, under contract with the Department of State, for providing refugees with initial housing, food, clothes, and shelter for the first 30 days after arrival in the U.S. However, in order to receive cash assistance after that initial period, refugees must apply to the local welfare office where they become engaged in a service delivery system which, in many States, may not include their local resettlement agency.

We believe the new program will more firmly unite the two key players—States and resettlement agencies—into a partnership that will best utilize their respective strengths. States would maintain the important role of administering the program and providing financial management and policy oversight, while the resettlement agencies would have an enhanced role in the longer-term resettlement of refugees they place in the State.

Under the public/private RCA program, States and voluntary agencies will have the flexibility to design programs to deliver refugee cash assistance in a manner that more fully integrates and supports resettlement. In order to accommodate resettlement in communities across the U.S. with different cost-of-living conditions, ORR is establishing payment ceilings which may be provided to refugees. Within these ceilings, a State and the resettlement agencies in that State will have the opportunity to develop a resettlement plan which incorporates the features, such as sliding scale payments or incentives, that they believe are best suited to achieving early self-sufficiency and to enriching the quality of life for refugees placed in their State. In addition, States and resettlement agencies will have the flexibility to establish the income-eligibility standard for RCA that they believe would best enable most newly arriving refugees to qualify for RCA.

States and resettlement agencies administering the public/private RCA program will be responsible for moving refugees to economic self-sufficiency within the RCA eligibility period by placing them in full-time employment. They will also be responsible for assisting refugees in their social self-sufficiency by giving refugees adequate preparation to be able to carry out basic activities, such as handling a bank account or using public transportation, that are essential to living in American society. With full responsibility for refugees during this period, States and resettlement agencies will be held accountable for both employment and resettlement results by the end of this 8-month period.

The proposed regulation would allow States under § 400.207 to claim reasonable and necessary administrative costs incurred by resettlement agencies in the administration of the public/private RCA program. Because of the potential for increased administrative costs due to the public/private administration of the RCA program, ORR is soliciting comments on mechanisms to ensure that changes in administrative costs do not result in a reduction of benefits to refugees.

We would expect States, when developing their annual social services plan, to factor into their fiscal planning social services funding for the public/private RCA program. We would also expect States to link the new RCA program with the existing State refugee social services system in order to enhance the coordination of services. We recognize that there may be additional service costs to fully implement the service component of the new RCA program while maintaining the State's regular refugee social services program for non-RCA refugees who have been in the U.S. for less than 5 years. For this reason, subject to the availability of funds, ORR proposes to supplement States' social services formula allocations with a portion of the non-formula social services funds that are reserved for the Director's discretionary use each year. These non-formula funds would be used as a supplement during the initial start-up years to enable States to establish a viable public/private RCA program without compromising their regular social services program. At the end of this initial period, States would be expected to cover the costs of services in the new RCA program within their regular social services budget.

States would be required to engage in a planning and consultation process with the resettlement agencies and with other agencies, such as mutual assistance associations (MAAs), that serve refugees in the State to design the public/private RCA program. From that process, States and resettlement agencies would develop a public/private RCA plan for submission to ORR no later than 6 months after publication of the final rule.

While a public/private RCA program is ORR's preferred approach, we fully recognize that this approach may not be the best choice in all States. Therefore, under the proposed regulation, States would have the flexibility to request an exception to the public/private program if an agreement cannot be reached with the local resettlement agencies or if the State has reason to believe that a public/private RCA program would not serve the best interests of refugees in that State. Certain criteria would have to be met for ORR to approve a State's request to operate an excepted RCA program. These criteria are discussed later in the preamble under a description of Exceptions to the Public/Private RCA Program, § 400.66. States that address these criteria would be able to operate a State-run excepted RCA program mirrored after their TANF program in regard to determination of eligibility, treatment of income and resources, benefit levels, and budgeting methods. States that believe that neither the public/private RCA program nor the RCA excepted program are the best programs to serve refugees in their State would have the flexibility to pursue a third option—an alternative program funded under the standing Wilson/Fish announcement. The Wilson/Fish program provides States and public and private non-profit agencies the opportunity to develop innovative approaches to providing cash assistance, social services, and case management as an alternative to the regular State-administered refugee program.

The proposed regulation contains a number of provisions to ensure that refugee rights and protections are safeguarded in the transfer of eligibility and cash assistance payment responsibilities from a State-administered to a public/private partnership program. While we have no interest in having resettlement agencies become mini-welfare bureaucracies, it is essential to have adequate client protections in place to ensure due process and equitable treatment.

We have added three changes to the refugee medical assistance program to

enable certain groups of refugees currently without medical coverage, such as newly arrived refugees who become employed within the first few weeks of arrival, to be eligible for RMA. First, States would be required to determine RMA eligibility on the basis of a refugee applicant's income and resources on the date of application, rather than averaging income over the application processing period. Second, States would be given the option of using a higher need standard of up to 200% of the national poverty level for determination of RMA eligibility. Third, refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, would be able to be transferred to RMA without an eligibility redetermination. We believe these changes in RMA eligibility are important to ensure that most newly arriving refugees, many of whom arrive with medical problems resulting from war-related trauma, have medical coverage during their first 8 months in the U.S.

Consistent with the preceding actions, 45 CFR 400.2, 400.5, 400.11, 400.13, 400.23, 400.27, 400.43, 400.44, Subpart E, 400.70, 400.71, 400.72, 400.75, 400.76, 400.77, 400.78, 400.79, 400.80, 400.81, 400.82, 400.83, 400.100, 400.101, 400.102, 400.104, 400.154, 400.155, 400.203, 400.207, 400.208, 400.209, 400.210, 400.211, 400.301, and 401.12 are being amended or removed. Some of these changes are technical in nature and are not discussed in the preamble.

Subpart A—Introduction

Section 400.2 is amended by replacing all references to the AFDC program with references to the TANF program and by adding a definition of an RCA Plan.

Subpart B—Grants to States for Refugee Resettlement

Section 400.5 is amended by reinserting paragraph (i) which was inadvertently removed when 45 CFR Part 400 was last codified in 1995.

Section 400.13(d) is amended by allowing the costs of case management to be charged to the CMA grant only in cases where the case management activities are targeted to time-eligible RCA recipients for the purpose of assisting such recipients to obtain employment and to become economically and socially self-sufficient.

Section 400.13 is amended by adding a new paragraph (e) which would allow States to charge administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (i.e., administrative costs of providing cash assistance) to the CMA grant. Administrative costs of managing the services component of the RCA program must be charged to the social services grant.

Administrative costs of providing cash assistance may include: (1) The salary costs of staff responsible for eligibility determinations and other administrative functions associated with the provision of cash payments; and (2) the portion of the local resettlement agency Director's time spent on managing the cash assistance component.

Subpart C—General Administration

Section 400.23 (Hearings) is amended by removing a reference to AFDC regulations and establishing that the hearing procedures to be followed in the public/private RCA program will be the procedures described in the public/private RCA plan and the hearing procedures to be followed in an RCA-excepted program and the RMA program will be those used in the State TANF program.

Section 400.27 (Safeguarding and sharing of information) is amended by removing paragraph (c) which references an AFDC regulation. It should be noted that § 400.58 requires that a State's public/private RCA plan contain a description of the procedures to be used to safeguard the disclosure of information on refugee clients.

Subpart D—Immigration Status and Identification of Refugees

Section 400.43 is amended by removing the following obsolete alien statuses for purposes of the refugee program: ''Admitted as a conditional entrant under section 203(a)(7) of the Act'' and ''Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director'' and by adding Cuban and Haitian entrants; and Amerasian immigrants to this section.

Section 400.44 is amended by clarifying that applicants for asylum are not eligible for assistance under the refugee program unless otherwise provided by Federal law, as is the case with Cuban and Haitian asylum applicants under section 501 of the Refugee Education Assistance Act of 1980.

Subpart E—Refugee Cash Assistance

Subpart E is revised by replacing the current RCA program with a new public/private partnership program in which States would contract with local resettlement agencies to provide transitional cash assistance and services to RCA-eligible refugees as described below.

General

The following general sections apply to both the public/private RCA program and State exceptions to the public/private RCA program.

Section 400.50 (Basis and scope) is retained without changes.

Section 400.51 (Definitions) is removed.

Section 400.52 (Recovery of overpayments and correction of underpayments) is removed.

Section 400.55 (Opportunity to apply for cash assistance) is redesignated as § 400.51 and amended by removing (b)(1), which references AFDC requirements, and by removing (b)(3), (b)(4), and (c), which require States to contact sponsoring resettlement agencies regarding financial assistance and offers of employment to refugees.

Section 400.56 (Determination of eligibility under other programs) is redesignated as § 400.52 and is amended by removing paragraphs (a)(1) and (a)(2) and redesignating paragraph (a)(3) as (a).

Section 400.57 (Emergency cash assistance to refugees) is redesignated as § 400.53.

Section 400.54 (General eligibility requirements) replaces § 400.60 and establishes the following eligibility requirements for the RCA program. To be eligible for the RCA program, a refugee must: (1) Be a new arrival who has resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211; (2) be ineligible for TANF and SSI; (3) have the proper immigration status and documentation for eligibility for benefits under the refugee program; (4) not be a full-time student in an institution of higher education; and (5) meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

Section 400.55 (Eligibility redeterminations in States with residency requirements) establishes that in States in which refugee families normally eligible for the TANF program are temporarily placed in the RCA program due to a TANF residency requirement, States are required to conduct an immediate redetermination of eligibility for TANF, once the

residency period is completed. This requirement applies regardless of whether the State is operating a local resettlement agency RCA program or, under an exception, a State agency-administered RCA program. Our intent is to ensure that RCA recipients eligible for TANF are transferred to that program in a timely manner, upon fulfilling the residency period, in order to limit the costs claimed against the RCA program for refugees eligible for TANF.

Public/Private Partnership RCA Program

Section 400.56 (Structure) establishes the structure for the provision of cash assistance through the proposed public/private RCA program. This section requires that States enter into a public/private partnership by administering the RCA program through contracts with the local resettlement agencies that resettle refugees in the State, unless the State meets the excepted criteria specified in section 400.66. We define local resettlement agencies as those agencies which provide initial reception and placement services to refugees under a cooperative agreement with the Department of State.

We believe that giving the local resettlement agencies that are responsible for the initial placement of refugees the additional responsibility of providing cash assistance to those refugees will result in more effective and better quality resettlement. At the same time, we fully recognize the policy and administrative oversight capacity that States are able to contribute to the resettlement process. We are proposing this structure to more firmly unite the two sectors into a partnership to help refugees.

We expect States to implement a public/private RCA program statewide. It is intended that all resettlement agencies placing refugees in a State will participate in the public/private RCA program to the extent possible.

However, if it is not feasible to operate a statewide public/private RCA program, States may propose a geographically split program for the delivery of RCA. We recognize that in some places the statewide public/private model may not be a reasonable approach. For example, in a State with a major urban area that receives 75% of the State's newly arriving refugees, the State and resettlement agencies may wish to operate a public/private RCA program in the urban area only, while choosing to operate an excepted RCA program through the State welfare agency in the balance of the State where the geographic dispersion of refugees may hinder resettlement agency delivery of benefits.

ORR will not consider a plan where the State proposes having both a public/private RCA program and an excepted RCA program in the same location. Such an arrangement would not be programmatically wise because it would cause confusion for refugees and would create unnecessary duplication.

We recognize that some local resettlement agencies sponsor refugees in States other than where they have an office, e.g., in States bordering and in close proximity to their local office such as occurs in Kansas/Missouri and in the District of Columbia/Maryland/Virginia metropolitan area. ORR intends, where possible, that these resettlement agencies also be involved in the planning of the public/private RCA plan of the bordering State. However, if that is not feasible (some States, for example, may not be able to enter into contracts outside of the State), ORR expects States, in conjunction with the local resettlement agencies, to make appropriate provisions for eligible refugees resettled by agencies not located within State boundaries. Examples of appropriate provisions may include the establishment of an office by the sponsoring resettlement agency in the State where they are placing refugees or co-locating staff with a resettlement agency that already has a presence in the State.

We recognize that some States may not have the staff or administrative support to contract with and manage numerous local agency contracts. We also recognize that some local resettlement agencies may not have the administrative and fiscal capacity to manage a cash assistance program. Therefore, under the public/private RCA plan, States and local resettlement agencies may consider different types of arrangements such as: (1) An agency-contained model where the local resettlement agency performs all fiscal and eligibility functions including the determination of eligibility, authorization of the RCA payment amount, the cutting of the checks, and the provision of payments to refugees; (2) a lead agency approach in which one resettlement agency assumes responsibility for managing the cash assistance component of the program for all the resettlement agencies; or (3) a model where the State acts as the fiscal agent, cutting benefit checks and managing cash flow, while the local resettlement agency determines eligibility, calculates the payment amount, and provides payments to refugees.

Regarding the provision of services in the public/private RCA program, a State that lacks the staff capacity to manage numerous local agency contracts may wish to consider contracting with a lead resettlement agency, with subcontracts to the other local resettlement agencies for the provision of services. Our interest in having each resettlement agency retain responsibility for services through subcontracts is to maintain the link between initial resettlement of refugees in a State and accountability for outcomes for these refugees through the provision of services. States would be responsible for overseeing and managing these contracts in the same manner as their regular social services contracts.

States and resettlement agencies will have one year from the date of publication of the final rule to implement the new public/private RCA program.

Section 400.57 (Planning and consultation) requires a process for planning and consultation for the proposed public/private RCA program. This section requires that the State and the local agencies that resettle refugees in the State engage in a process to develop a public/private RCA plan, the content of which is described in § 400.58. Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. In addition, representatives of refugee mutual assistance associations (MAAs), local community services agencies, and other agencies that serve refugees must be given the opportunity to participate in the discussion during the development period. We believe that full participation by MAAs and other community agencies throughout the planning process is essential to the development of a workable public/private RCA program. To facilitate this participation, it is permissible for States to charge to their CMA grant reasonable travel and per diem costs for MAAs and other agencies, as needed, to enable these agencies to more easily participate in the consultation process.

This section requires that the public be given the opportunity to submit written comments on the plan before it is transmitted to ORR.

This section also requires local resettlement agencies to keep their respective national voluntary resettlement agencies fully informed of the details of the public/private RCA program as the program is developed. Local resettlement agencies will be responsible for obtaining a letter of agreement from their national agencies stating that they will continue to place

refugees in the State under the new public/private program.

Section 400.58 (Development of a public/private RCA plan) establishes the requirements for the development of a public/private partnership plan which describes how the State and local resettlement agencies will administer and deliver RCA to eligible refugees. The plan must describe the agreed-upon public/private RCA system including: (1) The proposed income standards for RCA eligibility; (2) proposed payment levels to be used to provide cash assistance to eligible refugees; (3) assurance that the payment levels established are not lower than the State TANF amount; (4) a detailed description of how benefit payments will be structured, including the employment incentives and/or income disregards to be used, if any; (5) a description of how all refugees residing in the State will have easy access to cash assistance and services; (6) a description of the procedures to be used to ensure appropriate protections and due process for refugees, such as the correction of underpayments, notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity; (7) a description of proposed exemptions from participation in employability services; (8) a description of the employment and self-sufficiency services that the local resettlement agencies will be contracted to provide to RCA recipients; (9) procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a resettlement agency that does not have a presence in the receiving State; (10) if applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a resettlement agency in a bordering State which does not have an office in the State of resettlement; (11) a description of the procedures to be used to safeguard the disclosure of information on refugee clients; (12) letters of agreement from the national voluntary resettlement agencies that refugee placements in the State will continue under the public/private RCA program; and (13) a breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs.

The plan must be signed by the Governor or his or her designee and must be submitted to the ORR Director for review and approval no later than 6 months after the date of publication of the final rule.

RCA plan amendments must be developed in consultation with the local resettlement agencies to reflect any changes in policy and submitted to ORR in accordance with § 400.8.

Section 400.59 (Eligibility for the public/private RCA program) establishes that to be eligible for the public/private RCA program, a refugee must meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

In establishing an income eligibility standard for the public/private RCA program, States and resettlement agencies may wish to set a standard, for example, at 150% of the poverty level, that will allow refugees who are employed part-time in a low wage job to also be eligible for some level of cash assistance. States may wish to consider such a need standard in order to provide a more solid economic foundation for refugees during their first 8 months in the U.S. to better ensure continued self-sufficiency.

Section 400.60 (Cash payment levels) establishes allowable cash payment levels under the proposed public/private RCA program. This section requires monthly cash assistance payments to be made to eligible refugees using a payment level that does not exceed the following payment ceilings:

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

The ceiling payment levels are based on 50% of the 1998 HHS Poverty Guidelines for each family size, divided by 12 months, except as noted below.

For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

If the ORR Director determines that the payment ceilings need to be adjusted for inflation, ORR will issue revised payment ceilings through a notice in the **Federal Register**.

We expect that most refugees eligible for RCA will be one-person or two-person family units, singles and childless couples. We expect that most refugee families with dependent children will be eligible for TANF and, therefore, will not need to access the RCA program.

Payments to refugees may not be lower than the State TANF payment for the same sized family unit. States, therefore, that have TANF payment levels that are higher than the ceilings indicated above, must provide payment levels under the new public/private RCA program that are comparable to the State TANF payment levels.

We encourage States and local resettlement agencies to use the flexibility provided in the payment ceilings to include income disregards or other incentives such as employment bonuses, that will encourage early employment and self-sufficiency. States and resettlement agencies may design whatever combination of assistance payments and incentives they believe would be effective, as long as the total in any given month does not exceed the monthly ceiling amounts. This flexibility would allow States and local resettlement agencies to provide continued cash support while moving refugees into early employment.

We encourage States and local resettlement agencies to look at different approaches and to be creative in designing a program that will help refugees to establish a good economic foundation during the 8-month RCA period. We encourage States and local resettlement agencies to design an RCA program that takes into account that refugees arrive in the U.S. with little or no financial resources and that 8 months of cash assistance provides a limited period of time to gain a degree of financial stability.

One approach might be to permit the total of earned income and cash assistance of refugees who become employed full-time to exceed the cash assistance only payments made to refugees who are not employed. Another approach, currently being used in one State, provides an incentive to employed refugees through monthly reimbursements for work-related expenses such as tools, uniforms, work-related transportation expenses, medical insurance co-payments, or the cost of additional work-related training. The State has found this to be an effective incentive for early employment.

Section 400.61 (Services in the public/private RCA program) establishes that services provided to recipients of refugee cash assistance in the public/private program must be provided under contracts with the State by the local resettlement agencies that administer the public/private RCA program or their subcontractors. We believe it makes for good resettlement to have continuity between the placement of refugees in a State and accountability for the achievement of resettlement and self-sufficiency outcomes for these refugees by providing local resettlement agencies with the responsibility for these refugees during their first 8 months in the U.S. We will be looking to the

resettlement agencies to not only place refugees in employment at wages that will enable self-support, but to ensure that refugees receive the skills, such as English language acquisition and basic living skills, needed to live successfully in this country. We plan to work with States and local resettlement agencies to develop appropriate social self-sufficiency and English acquisition outcome measures to add to the employment and economic self-sufficiency client outcome measures that ORR currently uses in measuring results.

This section also establishes that States and local resettlement agencies must maintain ongoing coordination with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program: (1) Are appropriate to the linguistic and cultural needs of the incoming populations; and (2) are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the 8-month RCA period.

Allowable services under the public/private program are limited to those services described under §§ 400.154 and 400.155.

Section 400.62 (Coverage of secondary migrants, asylees, and Cuban/Haitian entrants) provides that the State and local resettlement agencies must ensure that there is a system in place which is accessible to eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants who want to apply for assistance. In developing these procedures, consideration must be given to how to ensure coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

Section 400.63 (Availability of agency policies) requires States to ensure that each participating local resettlement agency makes available to refugees the written policies of the public/private RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. States must ensure that agency policy materials are made available to refugee clients in English and in their own language.

Section 400.64 (Preparation of local resettlement agencies) requires national voluntary agencies to be responsible, in concert with the States, in preparing local resettlement agencies for their new responsibilities under the public/private RCA program during a period of transition. In light of the ongoing relationship of the national voluntary agencies with their local affiliates under the Department of State cooperative agreements for initial Reception and Placement (R&P) services, we believe the national agencies should share in the responsibility with the States for ensuring that their affiliate agencies have the capacity and structure to effectively handle the cash assistance and service needs of refugees over an 8-month period.

The States and national voluntary agencies will be responsible for: (1) Determining the training needed to enable local resettlement agencies to achieve a smooth transition into their expanded role; and (2) providing the training in a uniform way to ensure that all local resettlement agencies in the State will implement the new program in a consistent manner. Part of this training should involve helping the local resettlement agencies to change how they view their role—from a short-term initial resettlement role to a longer-term commitment to the economic self-sufficiency and social integration of the refugees they resettle. The national voluntary agencies should also be instrumental in helping the local resettlement agencies to establish a smooth linkage between Reception and Placement services and services under the RCA program and in facilitating the development of consortia among affiliates. States may also wish to call upon the national voluntary agencies to assist in providing remedial assistance and training to poorly performing affiliate agencies before contract sanctions are applied.

ORR proposes to use a portion of its non-formula social services funding, subject to the availability of appropriated funds, to support the national voluntary agencies in these training activities during a transition period of two years after publication of the final rule.

Section 400.65 (Monitoring) requires that ORR, States, and national voluntary agencies conduct joint monitoring of the new RCA program, beginning one year after the new program has been implemented, to ensure that the program is being carried out in a manner that produces positive self-sufficiency and resettlement outcomes. Subject to the availability of appropriated funds, ORR intends to use ORR non-formula social services dollars to support a portion of the monitoring costs of the national voluntary agencies, in conjunction with the Department of State, in the monitoring of the public/private RCA program and the DOS-funded Reception & Placement grants.

This section also requires States to conduct compliance monitoring to ensure that local resettlement agencies are complying with the approved RCA plan and with ORR requirements regarding the RCA program. It will be particularly important to make sure that refugees are receiving timely monthly cash payments at the levels prescribed and are provided proper due process protections.

Exceptions to the Public/Private RCA Program

Section 400.66 (Exceptions to the public/private RCA program) establishes that States that have good reason to believe that a public/private refugee cash assistance program is not workable in the State and would not be in the best interests of refugees resettled in the State, may request an exception to the public/private RCA program. While we consider the public/private RCA program to be the preferred approach to providing transitional assistance and services to refugees, we recognize that the public/private approach may not be the best approach for all States or for all areas in a State for a variety of reasons. For example, the local resettlement agency(ies) in a given State may not wish to assume responsibility for the refugee cash assistance program, or may not have the capacity to provide adequate geographic access to refugee cash assistance and services to refugees eligible for the program. Or, the Governor may conclude, after State consultations with the State's resettlement partners, that the best interests of newly-arriving RCA refugees will be more effectively served through the existing system. Further, the Governor could conclude that the existing system would better serve newly-arriving RCA refugees if the State determines that there would not be sufficient administrative funding to enter into a public/private partnership and administer the remaining components of the program.

When differences surface among the resettlement partners during the planning process, every effort must be made to address these differences and reach a compromise, using the best interests of refugees as the guiding principle in all discussions and negotiations.

If the differences are irreconcilable, the State may determine, after having negotiated in good faith with all resettlement partners, that the best interests of refugees will be served by retaining the provision of refugee cash assistance as a component of the State-administered program through the State's TANF agency.

To qualify for an RCA exception, a State: (1) Must demonstrate that it made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and (2) must meet one of the following criteria: (a) resettlement agencies operating in the State declined to accept responsibility for the provision of cash assistance; (b) the contemplated provision of cash assistance by resettlement agencies would not provide adequate access to cash assistance for newly-arrived RCA refugees; (c) the Governor concluded that a public/private RCA program would not be in the best interests of refugees; or (d) the Governor determined that administrative funding would not be sufficient to enter into a public/private partnership and administer the remaining components of the program.

If a State wishes to request an exception to the public/private RCA program, a State must submit a written request signed by the Governor or his or her designee which: (1) Provides documentation that the State made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and (2) addresses one of the criteria for an exception described in (a)–(d) above.

A request for an exception must be submitted to the ORR Director for review and approval no later than 6 months after the date of publication of the final rule.

If the Director determines that a State's request for an exception meets the required criteria outlined above, the Director will approve the request. If a request for an exception is based on a Governor's decision that a public/private RCA program would not be in the best interests of refugees in the State, ORR does not intend to review or question the substance of the Governor's decision. An approved RCA exception must be implemented no later than one year after publication of the final rule.

Section 400.67 (Eligibility and payment levels in an excepted RCA program) establishes that in administering an ORR-approved excepted RCA program, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to: (1) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard); (2) the determination of benefit amounts (payment levels based on size of the assistance unit, income disregards); (3) proration of shelter, utilities, and similar needs; (4) the date that refugee cash assistance (RCA) begins, in relation to the date of application; and (5) any other State TANF rules relating to eligibility and payments.

Section 400.68 (Non-applicable TANF requirements) establishes that States that are granted an RCA exception *may not* apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: (1) A State's durational residency requirement imposed on applicants for TANF may not apply to applicants for RCA; and (2) instead of TANF work requirements (hours of participation and allowable work activities), States must apply the requirements in § 400.75 which requires RCA recipients, as a condition of receipt of assistance, to participate in employment services within 30 days of receipt of aid, and Subpart I of 45 CFR Part 400 with respect to the provision of services for RCA recipients. The requirements and expectations for employment and participation in employment services in the refugee program are no less serious than the requirements in the TANF program. The requirements in the refugee program are simply different from TANF requirements in that the types of activities allowed in the refugee program are designed for the needs of newly-arrived refugees who typically arrive with little or no English language skills. Thus, in the refugee program, refugees participate extensively in English language training, assisted job search, and other employment-related activities that are designed to help limited-English speaking refugees to become self-sufficient within 8 months.

Section 400.69 (Notification of resettlement agencies) requires States to notify the local agency that was responsible for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under an RCA excepted program.

Subpart F—Requirements for Employability Services and Employment

Section 400.70 (Basis and scope) is amended to clarify that Subpart F applies to applicants and recipients of both the public/private RCA program and State-administered RCA exceptions.

Section 400.71 is amended to remove an incorrect reference to § 400.72(a) in the definition of the term, Designee.

Section 400.72 (Arrangements for employability services) is amended to clarify that the requirements in paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program through contracts with local resettlement agencies and to States that have been approved by ORR to operate an RCA excepted program, while paragraph (c) applies only to an RCA excepted program.

Section 400.76 (Exemptions) is revised by removing the list of individuals who may be exempt from participation in employment services. States and/or local resettlement agencies may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State. Given the short duration of the RCA program, however, and the need for refugees to become self-sufficient within this limited time frame, we would expect States and local resettlement agencies to require most RCA recipients to participate in employment services, with few exceptions.

Section 400.78 (Service requirements for employed recipients of refugee cash assistance), which requires an RCA recipient who is employed less than 30 hours a week to participate in part-time employment services, as a condition of continued receipt of refugee cash assistance, is removed and reserved. We leave it to States and local resettlement agencies to determine how best to design a program that moves refugees to full-time employment in a reasonable period of time.

Section 400.80 (Job search requirements), which requires job search where appropriate, is removed and reserved. Again, we leave it to the judgement of States and local resettlement agencies to decide the types of employment services that are the most effective in placing refugees in jobs.

Section 400.81(a) (Criteria for appropriate employability services and employment) is amended by replacing the reference to AFDC with a reference to TANF.

Section 400.81(b) is amended by limiting professional refresher training and other recertification services only to individuals who are working.

Section 400.82 (Failure or refusal to accept employability services or employment) is revised to specify requirements for timely and adequate notice of intended termination under the public/private RCA program and to

specify that under an RCA-excepted program, States must follow the procedures for notice of intended termination that are used in the State's TANF program.

Section 400.83 (Conciliation and fair hearings) is revised by establishing requirements for mediation and fair hearings in the public/private RCA program and requiring that States follow the procedures used for conciliation and fair hearings in the State TANF program in cases where a State operates an RCA-excepted program. Under this requirement, hearings must meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart G—Refugee Medical Assistance

Section 400.101(a) (Financial eligibility standards) is amended by giving States that operate a medically needy program the option of increasing the medically needy financial eligibility standard for RMA eligibility determination to up to 200% of the national poverty level by family size. Our intent in allowing States this new option is to ensure that States have the flexibility to broaden financial eligibility for refugee medical assistance, while receiving 100% Federal reimbursement of costs, in order to extend coverage to certain groups of new arrivals who are currently not covered under RMA. Refugees currently without medical coverage who would be affected by this provision include: (1) Refugees on TANF who obtain a job and terminate assistance before they have been on TANF for 3 months, who are then ineligible for transitional Medicaid; and (2) refugee spouses who arrive in the U.S. a number of months after their spouse who preceded them, and are not eligible for RMA because their employed spouse's income renders them ineligible for RMA.

Section 400.101(b) is amended with respect to States without a medically needy program by clarifying that references to AFDC refer to the AFDC need standard in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act (SSA). This is in keeping with the amendments made by section 114 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to section 1931 of the SSA.

Section 400.102 is revised to clarify that determination of eligibility for refugee medical assistance (RMA) must be based on the applicant's income and resources on the date of application, rather than on a refugee's income averaged prospectively over the RMA application processing period.

The purpose of this revision is to ensure that refugees who enter employment within the first few weeks after arrival in the U.S. are not penalized for accepting early employment by denial of refugee medical assistance. Refugees arrive in the U.S. with no income, and generally apply for refugee medical assistance very soon after arrival. With this revision, a newly arrived refugee who applies for refugee medical assistance soon after arrival and becomes employed within the first 30 days in the U.S. subsequent to filing the RMA application, would not lose RMA eligibility.

Section 400.102 is amended to remove references to AFDC regulations which no longer apply due to changes in Medicaid eligibility determination contained in PRWORA as described above.

Section 400.104 is amended to permit refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, to be transferred to refugee medical assistance without an eligibility redetermination. This amendment would allow refugees who lose Medicaid eligibility because they obtain early employment to maintain medical coverage under RMA during their first 8 months in the U.S. The purpose of this amendment is to encourage early economic self-sufficiency by ensuring that refugees receive continued medical assistance after employment and by ensuring that refugees are not discouraged from early employment by the potential loss of medical coverage.

Subpart I—Refugee Social Services

Section 400.155 is amended by adding citizenship and naturalization services as allowable services under the social services and targeted assistance formula programs. Citizenship and naturalization services may include such services as English language training and civics instruction to prepare refugees for citizenship, application assistance, and the provision of interpreter services for the citizenship interview, as needed.

Subpart J—Federal Funding

Section 400.207 (Federal funding for administrative costs) is amended by clarifying that a State may claim reasonable and necessary administrative costs incurred by local resettlement agencies in the administration of a public/private RCA program.

Section 400.210 (Time limits for obligating and expending funds and for filing State claims) is amended by revising § 400.210(b)(2) to extend the due date for a State's final financial report of expenditures of social services and targeted assistance formula grants to no later than 90 days after the end of the two-year expenditure period. This section clarifies that States must expend their social services and targeted assistance funds no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. Thus, under the proposed revision, States must have expended social services and targeted assistance funds awarded to them in FY 1999, for example, by no later than September 30, 2001, and a State's final financial report must be received no later than December 31, 2001. If, at that time, a State's final financial report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last submitted financial report.

This proposed revision is in response to requests from several States needing a full 2-year period to expend social services and targeted assistance funds from the end of the Federal fiscal year in which the funds are awarded.

Section 211(a) (Methodology to be used to determine time-eligibility of refugees) is amended to clarify that after making a determination of the RCA/RMA eligibility period as soon as possible after funds are appropriated for the refugee program, the Director will make redeterminations at subsequent points during the year only if a reduction in the eligibility period appears indicated.

Subpart K—Waivers and Withdrawals

Section 400.301 (Withdrawal from the refugee program) is amended by removing the words ''only under extraordinary circumstances and'' in § 400.301(b). This would allow the ORR Director greater discretion to approve cases in which a State wishes to retain responsibility for only part of the refugee program if it is in the best interest of the Government, without requiring extraordinary circumstances. For example, when a State with a small refugee population wishes to drop out of the refugee program, but is willing to retain responsibility for administering just the RMA program, it would be in the best interest of the Government to approve such an arrangement without other constraints.

Section 400.301(c) is amended by clarifying that a replacement designee

must adhere to the regulations regarding the targeted assistance formula program under Subpart L if the State wishing to drop out of the refugee program authorizes the replacement designee appointed by the ORR Director to act as the State's agent in applying for and receiving targeted assistance funds.

Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. These meetings were attended by close to 500 participants representing the broad resettlement network. We also consulted with representatives of States, Washington-based interest groups, refugee mutual assistance associations, and national voluntary agencies in follow-up sessions in Washington, D.C. to discuss what we learned from the initial round of consultations and to obtain feedback on our possible regulatory changes. We received additional feedback after group representatives consulted more broadly within their networks following the last round of meetings. The input we received is reflected in these proposed regulations to a considerable degree.

These proposed rules represent a renewed, more flexible stage in the refugee program State/Federal partnership. Rather than requiring that one national program fit all local situations, ORR has allowed the States the option to request implementation of an excepted RCA program if they determine that the public/private RCA model we have proposed is not feasible in their State, if the Governor determines that the new program is not in the best interests of refugees, or if the Governor determines that administrative funding is not sufficient to enter into a public/private partnership and administer the remaining components of the program. Likewise, the State may determine that the public/private RCA partnership would work well in only one community, and propose to implement a geographically split model.

Within the proposed public/private RCA program, we have also given States and local resettlement agencies broad flexibility to design a program which they believe will best serve refugees in their community. Rather than prescribing certain elements, we have given States and resettlement agencies the flexibility to determine: The income standard for receipt of RCA in their State; the benefit level within a broad range of benefit levels; whether employment incentives should be provided, and if so, how those incentives should be provided; the services to be provided; and the procedures States and local resettlement agencies will put in place to ensure due process and protections for refugees. States are also given the option, but not required, to set a higher need standard for refugee medical assistance. And within the proposed public/private RCA plan structure, there are several administrative models which may be considered by States and resettlement agencies.

One of our key goals in drafting the regulations was to recognize, encourage, and enhance the partnerships that Congress intended with the passage of the Refugee Act. Although we have drafted regulations for a Federally-funded program, the proposed rules are intended to reflect our recognition that resettlement takes place at the local level and works best when all parties work together. In our proposed rules, we have tried to support the different, but equally important, contributions that the public and private sectors are able to bring to the refugee resettlement process. We hope that the proposed rules will serve to foster better and stronger partnerships at all levels, including those among local resettlement agencies and service providers, which will result in good resettlement.

We are concerned that the proposed revisions could increase the cost of the program, particularly during implementation. We expect the administrative costs to decrease substantially after the first year of implementation.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect 46 participating States and the District of Columbia, and local resettlement agencies that agree to assume responsibility for providing cash assistance and services to newly arrived refugees in States that elect to establish the new public/private RCA program. Local resettlement agencies are non-profit private organizations that are responsible for the initial resettlement of refugees in the U.S. under cooperative agreements with the Department of State. Participation of these local agencies in the public/private RCA program to be established by this regulation will be strictly voluntary. In addition, local resettlement agencies that choose to assume responsibility for the new RCA program will be fully funded with Federal refugee program funds. These rules will only have an impact on those small entities (local resettlement agencies) that voluntarily elect to participate in the public/private RCA program. Thus, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act of 1995

The following sections contain information collection, third party reporting, or recordkeeping requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)): §§ 400.43, 400.5, 400.51(c), 400.57(c), 400.58, 400.63, 400.66, and 400.82(b). The Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 400.43 requires applicants to provide proof of alien status for eligibility to the refugee program. Section 400.5 requires that States submit a State plan in order to receive refugee program funding. Section 400.51(c) requires that States or their designees provide notice to applicants or recipients to indicate that assistance has been authorized, denied, or terminated and the program under which that determination was made. Section 400.57(c) requires that each local voluntary agency resettling in a State inform its national resettlement agency of the proposed public/private RCA program and obtain a letter of agreement from the national agency. Section 400.58 requires that States submit a public/private RCA plan for ORR review and approval before the State implements the plan. Section 400.63 requires that States ensure that

each participating local resettlement agency mades available to refugees the written policies of the public/private RCA program. Section 400.66 requires States that wish to request an exception to the public/private RCA program to submit a written request that addresses certain criteria before a State implements an excepted program. Section 400.82(b) requires that States provide a notice of intended termination to clients who have failed to meet certain work related requirements.

The information in these plans is needed to carry out ORR's oversight responsibilities under section 412 of the Immigration and Nationality Act. Additionally, certain information is typically necessary to respond to Congressional and other inquiries about the program.

The effect of these information collection, reporting, or third-party notification requirements will be limited to the 46 States and the District of Columbia that participate in the refugee program, and 2–3 non-profit agencies that administer the program in States that no longer participate in the refugee program. We do not anticipate that all States will elect to operate a public/private RCA program; those States that choose not to operate such a program will not have to submit a public/private RCA plan. Those States that choose to implement a public/private RCA program will have to submit a public/private RCA plan only once. Additional submissions will only be necessary if the plan is modified in the future. The average burden per response for the preparation of an RCA plan is estimated to be 24 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 1,176 hours if all States elect to implement a public/private RCA program. States that request an exception to the public/private RCA program will have to submit a written request once. The average burden per response for the preparation of a written request for an excepted RCA program is estimated to be 3 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 147 hours if all States elect to request an exception to a public/private RCA program. Other requirements, such as the State plan (§ 400.5), are not changed. States receiving refugee program funds have a plan on file at ORR. We estimate the number of hours required to amend the plan to be a maximum of 1 hour annually. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is estimated to be no more than 47 hours if all States amend their plan in a given year. We estimate the average burden for other sections as follows: § 400.43 will be 500 hours annually; § 400.51(c) will be 850 hours annually; § 400.57(c) will be 200 hours annually; § 400.63 will be 9 hours annually; and § 400.82(b) will be 850 hours annually.

The Office of Refugee Resettlement will consider comments by the public on these proposed collections of information in: (1) Evaluating whether the proposed collections are necessary for the proper performance of the functions of ORR, including whether the information will have practical utility; (2) evaluating the accuracy of ORR's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 205 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Congressional Review of Rulemaking

This rule is not a ''major'' rule as defined in Chapter 8 of 5 U.S.C.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs.

List of Subjects

45 CFR Part 400

Grant programs—social programs, Health care, Public assistance programs, Refugees, Reporting and Record keeping requirements.

45 CFR Part 401

Cuba, Grant programs—social programs, Haiti, Public assistance programs, Refugees.

Dated: July 23, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: August 22, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR Parts 400 and 401 are proposed to be amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by removing the definition of *AFDC* and adding a definition of *TANF* to read as

set forth below and by removing the word ''AFDC'' wherever it appears in this section and adding in its place the word ''TANF''.

§ 400.2 Definitions.

* * * * *

TANF means temporary assistance for needy families.

* * * * *

3. Section 400.2 is further amended by removing the word ''to'' after the word ''refer'' in the definition of *Case management services.*

4. Section 400.2 is further amended by adding a definition of *RCA Plan* to read as follows:

* * * * *

RCA Plan means a written description of the public/private RCA program administered by local resettlement agencies under contract with a State.

§ 400.5 [Amended]

5. Section 400.5 is amended by adding paragraph (i) to read as follows:

§ 400.5 Content of the plan.

* * * * *

(i) Provide that the State will:

(1) Comply with the provisions of title IV of the Act and official issuances of the Director;

(2) Meet the requirements in this part;

(3) Comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and

(4) Amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.11 [Amended]

6. Section 400.11(b) is amended by revising the word ''then'' to read ''than''.

§ 400.13 [Amended]

7. Section 400.13(d) is revised to read as follows:

§ 400.13 Cost allocation.

* * * * *

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where the case management activities are targeted to time-eligible RCA recipients for the purpose of assisting such recipients to obtain employment and to become economically and socially self-sufficient.

8. Section 400.13 is further amended by adding a new paragraph (e) that reads as follows:

§ 400.13 Cost allocation.

* * * * *

(e) Administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (i.e., administrative costs of providing cash assistance) may be charged to the CMA grant. Administrative costs of managing the services component of the RCA program must be charged to the social services grant.

§ 400.23 [Amended]

9. Section 400.23(a) is amended by removing the words ''in § 205.10(a) of this title for public assistance programs'' and adding in their place the words ''in the RCA plan in the case of the public/private RCA program and by the State's TANF program in the case of an RCA-excepted program and for the RMA program.''

10. Section 400.23(b) is amended by adding the words ''or its designee'' after the word ''State''.

§ 400.27 [Amended]

11. Section 400.27 is amended by removing paragraph (c).

§ 400.43 [Amended]

12.–13. Section 400.43 is amended by removing paragraphs (a)(2) and (5); by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3) respectively; and by adding new paragraphs (a)(4) and (5) that read as follows:

§ 400.43 Requirements for documentation of refugee status.

(a) * * *

(4) Cuban and Haitian entrants, as described in 45 CFR part 401;

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100–461 as amended); or

* * * * *

§ 400.44 [Amended]

14. Section 400.44 is amended by adding the words ''unless otherwise provided by Federal law'' after the word ''Act'' at the end of the sentence.

Subpart E—[Revised]

15. Subpart E is revised to read as follows:

Subpart E—Refugee Cash Assistance

General

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Opportunity to apply for cash assistance.

(a) A State or its designee agency(s) must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State or its designee agency(s) must refer elderly or disabled refugees and refugees with dependent children to other cash assistance programs to apply for assistance in accordance with § 400.52.

(c) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State or its designee agency(s) must specify the program(s) to which the notice applies. For example, in the case of the public/private RCA program, if a refugee is determined ineligible for RCA, the local resettlement agency must provide notice of this determination to the refugee. In the case of an excepted RCA program, if a refugee applies for assistance and is determined ineligible for TANF but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to TANF and to refugee cash assistance. Similarly, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, and the State or its designee reviews the case file to determine possible eligibility for TANF or GA due to changed circumstances, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.52 Determination of eligibility under other programs.

(a) *TANF.* For refugees determined ineligible for cash assistance under the TANF program, the State or its designee must determine eligibility for refugee cash assistance in accordance with §§ 400.54 and 400.59 in the case of the public/private RCA program or §§ 400.54 and 400.67 in the case of an RCA excepted program.

(b) *Cash assistance to the aged, blind, and disabled*—(1) *SSI.* (i) The State agency or its designee must refer refugees who are 65 years of age or older, or who are blind or disabled,

promptly to the Social Security Administration to apply for cash assistance under the SSI program.

(ii) If the State agency or its designee determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.53 Emergency cash assistance to refugees.

If the State agency or its designee determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

§ 400.54 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are new arrivals who have resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211;

(2) Are ineligible for TANF, SSI, OAA, AB, APTD, and AABD programs;

(3) Meet immigration status and identification requirements in subpart D of this part or are the dependent children of, and part of the same family unit as, individuals who meet the requirements in subpart D, subject to the limitation in § 400.208 with respect to nonrefugee children; and

(4) Are not full-time students in institutions of higher education, as defined by the Director.

(b) A refugee may be eligible for refugee cash assistance under this subpart during a period to be determined by the Director in accordance with § 400.211.

§ 400.55 Eligibility redeterminations in States with TANF residency requirements.

In cases where refugee families with dependent children, normally eligible for TANF, are placed in the RCA program due to a State TANF residency requirement, a State must conduct a redetermination of eligibility for TANF within one month of the refugee family completing the TANF residency period. If eligible, the refugee family must be transferred from the RCA program to the TANF program at that time.

Public/Private RCA Program

§ 400.56 Structure.

(a) States must enter into a partnership agreement with local resettlement agencies for the operation of a public/private RCA program, unless they meet the excepted criteria specified in § 400.66.

(b) The public/private RCA program must be administered by the State through contracts with local resettlement agencies or a lead resettlement agency that provides initial resettlement services under the terms of the Department of State Cooperative Agreement for Reception and Placement.

(c) The public/private RCA program must be Statewide, unless the State and local resettlement agencies agree that it is not in the best interests of refugees to provide a public/private RCA program in a particular area of the State.

(d) Local resettlement agencies must be responsible for determining eligibility, and authorizing and providing payments to eligible refugees.

(e) States and local resettlement agencies may not propose to operate a public/private RCA program and an excepted RCA program in the same geographic location.

(f) States must ensure the provision of RCA assistance to eligible refugees in the State who are sponsored by resettlement agencies in bordering states, where applicable.

§ 400.57 Planning and consultation process.

The State and the local agencies that resettle refugees in the State must engage in a joint planning and consultation process to develop a public/private RCA plan in accordance with the requirements under § 400.58.

(a) Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. During the planning process, the State must fully consult with representatives of refugee mutual assistance associations (MAAs), local community services agencies, and other agencies that serve refugees.

(b) The public must be given the opportunity to comment on the plan in writing before it is transmitted to the Director of ORR.

(c) Each local resettlement agency that resettles refugees in the State must inform its national resettlement agency of the proposed public/private RCA program and must obtain a letter of agreement from the national agency that the national agency will continue to place refugees in the State under the public/private RCA program.

§ 400.58 Content and submission of public/private RCA plan.

(a) States and local resettlement agencies must develop a public/private RCA plan which describes how the State and local resettlement agencies will administer and provide refugee cash assistance to eligible refugees. The plan must describe the agreed-upon public/private RCA program including:

(1) The proposed income standard to be used to determine RCA eligibility;

(2) The proposed payment levels to be used to provide cash assistance to eligible refugees;

(3) Assurance that the payment levels established are not lower than the comparable State TANF amounts;

(4) A detailed description of how benefit payments will be structured, including a description of employment incentives and/or income disregards to be used, if any;

(5) A description of how all RCA eligible refugees residing in the State will have easy access to cash assistance and services;

(6) A description of the procedures to be used to ensure appropriate protections and due process for refugees, such as notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity;

(7) A description of proposed exemptions from participation in employability services;

(8) A description of the employment and self-sufficiency services that the local resettlement agencies will be contracted to provide to RCA recipients;

(9) Procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a resettlement agency that does not have a presence in the receiving State.

(10) If applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a resettlement agency in a bordering State which does not have an office in the State of resettlement;

(11) A description of the procedures to be used to safeguard the disclosure of information on refugee clients;

(12) Letters of agreement from the national voluntary resettlement agencies that refugee placements in the State will continue under the public/private RCA program; and

(13) A breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs.

(b) In cases where the State, after consultation with the local resettlement agencies in the State, determines that a public/private RCA program is not feasible statewide and proposes to implement a public/private RCA program in only a portion of the State and to operate an excepted RCA program in the balance of the State, the State's RCA plan must include the information required in § 400.66.

(c) The plan must be signed by the Governor or his or her designee.

(d) The Director of ORR will follow the procedures in § 400.8 for the approval of public/private RCA plans.

(e) Any amendments to the public/private RCA plan must be developed in consultation with the local resettlement agencies and must be submitted to ORR in accordance with § 400.8. The Director of ORR will follow the procedures in § 400.8 for approval of amendments to public/private RCA plans.

§ 400.59 Eligibility for the public/private RCA program.

Eligibility for refugee cash assistance under the public/private program is limited to those who meet the income eligibility standard jointly established by the State and local resettlement agencies in the State.

§ 400.60 Payment levels.

(a)(1) Under the public/private RCA program, States and the local resettlement agencies contracted to administer the RCA program must make monthly cash assistance payments to eligible refugees that do not exceed the following payment ceilings, according to the number of persons in the assistance unit, except as noted in paragraph (b):

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

(2) For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

(b) States and local resettlement agencies may not make payments to refugees that are lower than the State's TANF payment for the same sized family unit. In States that have TANF payment levels that are higher than the ceilings established in this section, States and local resettlement agencies must provide payment levels under the public/private RCA program that are comparable to the State's TANF payment levels.

(c) States and local resettlement agencies may design an assistance program that combines RCA payments with income disregards or other incentives such as employment bonuses, or graduated payments in order to encourage early employment and self-sufficiency, as long as the total combined payment in any given month does not exceed the monthly ceilings established in this section.

(d) If the Director determines that the payment ceilings need to be adjusted for inflation, the Director will publish a final notice in the **Federal Register** announcing the new payment ceilings.

§ 400.61 Services to public/private RCA recipients.

(a) Services provided to recipients of refugee cash assistance in the public/private RCA program must be provided by the local resettlement agencies that administer the public/private RCA program or their subcontractors.

(b) Allowable services under the public/private program are limited to those services described in §§ 400.154 and 400.155 and are to be funded in accordance with § 400.206.

(c) States and local resettlement agencies must coordinate on a regular basis with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program:

(1) Are appropriate to the linguistic and cultural needs of the incoming populations; and

(2) Are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the end of the time-limited RCA eligibility period.

§ 400.62 Treatment of eligible secondary migrants, asylees, and Cuban/Haitian entrants.

The State and local resettlement agencies must establish procedures to ensure that eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants have access to public/private RCA assistance if they wish to apply. In developing these procedures, consideration must be given to ensuring coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

§ 400.63 Availability of agency policies.

The State must ensure that each participating local resettlement agency makes available to refugees the written policies of the public/private RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. States must ensure that agency policy materials are made available to refugee clients in English and in their own language.

§ 400.64 Preparation of local resettlement agencies.

The State and the national voluntary agencies whose affiliate agencies will be responsible for implementing the public/private RCA program:

(a) Must determine the training needed to enable local resettlement agencies to achieve a smooth implementation of the RCA program; and

(b) Must provide the training in a uniform way to ensure that all local resettlement agencies in the State will implement the public/private RCA program in a consistent manner.

§ 400.65 Monitoring.

(a) Joint monitoring. (1) The Director of ORR, or his or her designee, and the State must conduct joint monitoring of the public/private RCA program, beginning no later than one year after the new program has been implemented to ensure that the program is being carried out in a manner that produces positive self-sufficiency and resettlement outcomes.

(2) Subject to the availability of appropriated funds, the national voluntary agencies must also participate in this joint monitoring in locations where their local affiliates participate in a public/private RCA program.

(b) The State must conduct compliance monitoring to ensure that local resettlement agencies are complying with the terms of the

approved public/private RCA plan and with ORR regulations in regard to the RCA program.

Exceptions to the Public/Private Program

§ 400.66 Criteria and procedure for granting an exception.

(a) A State that has good reason to believe that a public/private refugee cash assistance program is not workable in the State or would not be in the best interests of refugees resettled in the State may request an exception to the public/private RCA program.

(1) To qualify for an RCA exception, a State:

(i) Must demonstrate that it made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and

(ii) Must meet one of the following criteria:

(A) Local resettlement agencies operating in the State declined to accept responsibility for the provision of cash assistance;

(B) The contemplated provision of cash assistance by local resettlement agencies would not provide adequate access to cash assistance for newly-arrived RCA refugees;

(C) The Governor concluded that a public/private RCA program would not be in the best interests of refugees; or

(D) The Governor determined that administrative funding is not sufficient to enter into a public/private partnership and administer the remaining components of the program.

(2) To request an exception to the public/private RCA program, a State must submit a written request signed by the Governor or his or her designee which:

(i) Provides documentation that the State made a good faith effort to reach agreement on a public/private RCA program through a planning and consultation process; and

(ii) Addresses one of the four criteria for an exception described in paragraph (a)(1)(ii) of this section.

(3) If a State's request for an exception meets the required criteria outlined in paragraph (a)(1), the Director will approve the request.

(b) States that determine that a public/private RCA program or an RCA excepted program are not the best approach for their State may choose instead to establish an alternative approach under the Wilson/Fish program.

§ 400.67 Eligibility and payment levels in an excepted RCA program.

In administering an approved excepted RCA program, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to:

(a) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard);

(b) The determination of benefit amounts (payment levels based on size of the assistance unit, income disregards);

(c) Proration of shelter, utilities, and similar needs;

(d) The date that refugee cash assistance (RCA) begins, in relation to the date of application; and

(e) Any other State TANF rules relating to eligibility and payments.

§ 400.68 Non-applicable TANF requirements.

States that are granted an RCA exception may not apply certain TANF requirements to refugee cash assistance applicants or recipients as follows:

(a) A State's durational residency requirement imposed on applicants for TANF may not apply to applicants for RCA; and

(b) TANF work requirements (hours of participation and allowable work activities) may not apply to RCA applicants or recipients. States must meet the requirements in subpart I of 45 CFR part 400 with respect to the provision of services for RCA recipients.

§ 400.69 Notification to local resettlement agency.

The State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under an RCA excepted program.

§ 400.70 [Amended]

16. Section 400.70 is amended by adding the words ''under both the public/private RCA program and State-administered RCA exceptions'' after the word ''assistance'' and before the word ''concerning''.

§ 400.71 [Amended]

17. Section 400.71 is amended by removing the words ''§ 400.72(a) of'' from the definition of the term *Designee*.

§ 400.72 [Amended]

18. Section 400.72 is amended by adding introductory text to read as follows:

§ 400.72 Arrangements for employability services. Paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program and to States that operate an ORR-approved RCA excepted program. Paragraph (c) applies only to RCA excepted programs.

(a) * * *

* * * * *

§ 400.75 [Amended]

19. Section 400.75(b) is amended by adding the words ''or its designee'' after the words ''State agency''.

§ 400.76 [Revised]

20. Section 400.76 is revised to read as follows:

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

States and local resettlement agencies operating a public/private RCA program, as well as States operating an RCA excepted program, may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State.

§ 400.77 [Amended]

21. Section 400.77(a) is amended by removing the words''§ 400.82(b)(3)(ii)'' and adding in their place the words ''§ 400.82(c)(2).''

§ 400.78 [Removed]

22. Section 400.78 is removed.

§ 400.79 [Amended]

23. Section 400.79(a) is amended by removing the word ''filing'' and adding in its place the word ''family'' before the word ''unit''.

24. Section 400.79 is further amended by adding the word ''and'' at the end of the paragraph (c)(1) and by removing the semicolon and the word ''and'' at the end of paragraph (c)(2) and adding in their place a period.

§ 400.80 [Removed]

25. Section 400.80 and the undesignated centerhead immediately preceding it are removed.

§ 400.81 [Amended]

26. Section 400.81 is amended by removing the word ''AFDC'' and adding in its place the word ''TANF'' in paragraphs (a) introductory text and (a)(4).

27. Section 400.81(b) is further amended by adding a sentence at the end of paragraph (b) that reads: ''This training may only be made available to individuals who are employed.''

§ 400.82 [Amended]

28. Section 400.82 is amended by redesignating paragraph (b)(3) as (c) and by redesignating paragraphs (b)(3)(i) and (ii) as (1) and (2) respectively.

29. Section 400.82 is further amended by revising paragraphs (a) and (b) to read as follows:

§ 400.82 Failure or refusal to accept employability services or employment.

(a) *Termination of assistance.* When, without good cause, an employable non-exempt recipient of refugee cash assistance under the public/private RCA program or under an approved RCA excepted program has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State, or the agency responsible for the provision of RCA, must terminate assistance in accordance with paragraphs (b) and (c) of this section.

(b) *Notice of intended termination*—(1) *Public/private RCA program.* (i) In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the local resettlement agency responsible for the provision of RCA, must give timely and adequate notice, in accordance with adverse action procedures the State has established under the public/private RCA program to ensure due process.

(ii) Local resettlement agencies must provide written procedures in English and in the refugee's own language, for good cause determination and sanctioning of refugees who do not comply with the requirements of the program and for refugees to file appeals.

(iii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the recipient's right to a hearing under § 400.83.

(2) RCA-excepted program. In cases of proposed action to terminate, discontinue, suspend, or reduce assistance, the State agency must give timely and adequate notice following the same procedures as those used in its TANF program.

* * * * *

30. Section 400.83 is revised to read as follows:

§ 400.83 Mediation and fair hearings.

(a) *Mediation*—(1) *Public/private RCA program.* The State must ensure that a mediation period prior to imposition of sanctions is provided to refugees by local resettlement agencies under the public/private RCA program. The State and local resettlement agencies must determine the length of the mediation period and must include a description of the mediation period in the public/private RCA plan required in § 400.58.

(2) RCA-excepted program. Under an RCA-excepted program, the State must use the same procedures for mediation/conciliation as those used in its TANF program.

(b) *Hearings*—(1) *Public/private RCA program.* (i) The State must ensure that local resettlement agencies provide an applicant for or recipient of refugee cash assistance an opportunity for an oral pre-termination hearing to contest adverse determinations, including a determination concerning employability or failure or refusal to participate in employment services or to accept an appropriate offer of employment, resulting in denial or termination of assistance.

(A) Hearings must be conducted by an impartial official or designee of the local resettlement agency who has not been involved directly in the initial determination of the action in question.

(B) A hearing need not be granted when Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(ii) The State must ensure that local resettlement agencies provide timely and adequate notice in the refugee's language of any determination.

(iii) The State must ensure that procedures are established to provide refugees a right of final appeal for an in-person hearing provided by an impartial, independent entity outside of the local resettlement agency.

(2) *RCA-excepted program.* The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards used in the State's TANF program to contest a determination of employability, or failure or refusal to participate in employment services or accept an appropriate offer of employment, resulting in denial or termination of assistance.

§ 400.100 [Amended]

31. Section 400.100(a)(2) is amended by removing the word ''filing'' and adding in its place the word ''family'' before the word ''unit''.

§ 400.101 [Amended]

32. Section 400.101(a) is revised to read as follows:

§ 400.101 Financial eligibility standards.

* * * * *

(a) In States with medically needy programs under 42 CFR part 435, subpart D:

(1) The State's medically needy financial eligibility standards established under 42 CFR part 435, subpart I, and as reflected in the State's approved title XIX State Medicaid plan; or

(2) A financial eligibility standard established at up to 200% of the national poverty level; and

* * * * *

33. Section 400.101(b) is amended by removing the words ''established under § 233.20(a)(2) of this title'' and adding in their place the words ''in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act.''

§ 400.102 [Revised]

34. Section 400.102 is revised to read as follows:

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraphs (b) and (c) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must—

(1) In States with medically needy programs, use the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan.

(2) In States without medically needy programs, use the standards governing consideration of income and resources of AFDC applicants in effect as of July 16, 1996.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

(c) The State must base eligibility for refugee medical assistance on the applicant's income and resources on the date of application. The State agency may not use the practice of averaging income prospectively over the application processing period in determining income eligibility for refugee medical assistance.

35. Section 400.104 is revised to read as follows:

§ 400.104 Continued coverage of recipients who receive increased earnings from employment.

(a) If a refugee who is receiving refugee medical assistance receives earnings from employment, the earnings shall not affect the refugee's continued medical assistance eligibility.

(b) If a refugee, who is receiving Medicaid and has been residing in the U.S. less than the time-eligibility period for refugee medical assistance, becomes ineligible for Medicaid because of earnings from employment, the refugee may be transferred to refugee medical assistance without an eligibility redetermination.

(c) Under paragraphs (a) and (b) of this section, a refugee shall continue to receive refugee medical assistance until he/she reaches the end of his or her time-eligibility period for refugee

medical assistance, in accordance with § 400.100(b).

(d) In cases where a refugee is covered by employer-provided health insurance, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.154 [Amended]

36. Section 400.154(j) is amended by removing the word ''AFDC'' and adding in its place the word ''TANF''.

37. Section 400.155 is amended by adding a new paragraph (i) that reads as follows:

§ 400.155 Other services.

* * * * *

(i) Citizenship and naturalization preparation services including English language training and civics instruction to prepare refugees for citizenship, application assistance, and the provision of interpreter services for the citizenship interview.

§ 400.203 [Amended]

38. Section 400.203(a)(1) is amended by removing the word ''AFDC'' and adding in its place the word ''TANF''.

§ 400.207 [Amended]

39. Section 400.207 is amended by adding a sentence after the word ''Families'' that reads: ''Such costs may include reasonable and necessary administrative costs incurred by local resettlement agencies in providing assistance and services under a public/private RCA program.'' and by removing the word ''Such'' in the last sentence and adding in its place the word ''Administrative''.

§ 400.208 [Amended]

40. Section 400.208 is amended by removing the word ''filing'' whenever it appears and adding in its place the word ''family''.

§ 400.209 [Amended]

41. Section 400.209 is amended by removing the word ''filing'' whenever it appears and adding in its place the word ''family'' and by removing the word ''AFDC'' in paragraph (a) and adding in its place the word ''TANF''.

42. Section 400.210 is amended by revising paragraph (b)(2) to read as follows:

§ 400.210 Time limits for obligating and expending funds and for filing State claims.

* * * * *

(b) * * *

(2) A State must expend its social service and targeted assistance grants no later than two years after the end of the FFY in which the Department awards the grant. A State's final financial report on expenditures of social services and targeted assistance grants must be received no later than 90 days after the end of the two-year expenditure period. At that time, if a State's final financial expenditure report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, based on a State's last submitted financial report.

§ 400.211 [Amended]

43. Section 400.211(a) is amended by removing the word ''necessary'' and adding in its place the words ''a reduction in the eligibility period is indicated'' after the word ''if''.

44. Section 400.211(a)(2) is amended by removing the word ''member'' and adding in its place the word ''number'' after the word ''annual''.

45. Section 400.211(b) is amended by removing the word ''impleting'' and adding in its place the word ''implementing''.

§ 400.301 [Amended]

46. Section 400.301(b) is amended by removing the words ''only under extraordinary circumstances and'' after the word ''granted''.

47. Section 400.301(c) is amended by adding the following sentence after the words ''subpart L'': ''Replacement designees must also adhere to the subpart L regulations regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds''.

48. Section 400.301(c) is further amended by removing the words ''400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i)'' and adding in their place the words ''400.52(b)(2)(i), 400.55, 400.58(c)''.

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

1. The authority citation for Part 401 continues to read as follows:

Authority: Section 501(a), Pub. L. 96–422, 94 Stat. 1810 (8 U.S.C. 1522 note); Executive Order 12341 (January 21, 1982).

§ 401.12 [Amended]

l. Section 401.12(a) is amended by removing the word ''§ 400.62'' and adding in its place the words ''subparts E and G of part 400 of this title''.

[FR Doc. 99–202 Filed 1–7–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 249

[MARAD–98–4395]

RIN No. 2133AB 36

Approval of Underwriters for Marine Hull Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking; termination.

SUMMARY: On September 23, 1998, the Maritime Administration (MARAD) published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments from interested persons concerning the need to amend the existing regulations governing the placement of marine hull insurance on subsidized and Title XI program vessels because of the merger of the Institute of London Underwriters (ILU) and the London International Insurance and Reinsurance Market Association (LIRMA). Under the existing regulations ILU members are approved to write marine hull insurance provided they meet certain trust agreement requirements. Based on the response, MARAD is terminating the proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, (202) 366–2400.

SUPPLEMENTARY INFORMATION: The new organization formed by the merger will be called the International Underwriters Association (IUA) of London. Because this new organization does not have the same eligibility criteria as the ILU or any internal oversight activities, MARAD was seeking input on the best method to review and approve member companies in the future.

MARAD received comments on behalf of the ILU, Lykes Lines Limited, LLC, Keystone Shipping Co., and a group of students at Florida International University. All commenters felt that post merger ILU companies should be subject to the existing ''Other Foreign Underwriters'' requirements set out in MARAD's insurance regulation at 46 CFR Part 249.5(c). The commenters felt that these requirements were sufficiently stringent to protect MARAD's interests.

Based on MARAD's own internal review and the limited response to the ANPRM, MARAD has decided not to proceed with a formal rulemaking on this matter. Instead, MARAD has

decided to have those interested postmerger ILU companies seek approval under the existing ''Other Foreign Underwriters'' procedures in the existing regulation.

It appears that most transitioning ILU member companies have terminated or will terminate their ILU membership by January 1, 1999 although the ILU will continue to exist as a management company for the ILU facility. In order to provide a smooth transition and allow for sufficient time for interested former ILU members to apply under 46 CFR Part 249.5(c), MARAD will continue to recognize as acceptable security all companies who were members of the ILU on or before December 31, 1998, and meet the trust agreement requirements, until January 1, 2000. Although MARAD recognizes that some existing insurance contracts may run longer than one year, MARAD believes that a one year grace period is sufficient time for an interested underwriter to obtain approval on an individual company basis. In addition, MARAD will require that any former ILU company wishing to underwrite marine hull insurance on MARAD related business must seek it's own approval under 46 CFR Part 249.5(c) regardless of the fact that its parent company, subsidiary or affiliate, may have been previously approved under 46 CFR Part 249.5(c).

By order of the Maritime Administrator.

Dated: January 5, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–423 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register

Vol. 64, No. 5

Friday, January 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the seventh of eight planned meetings. The meeting is scheduled to be held at the River Inn, 924 25th Street, Washington, DC, beginning at 8:00 a.m. on February 24 and concluding at 11:00 a.m. on February 26. The meeting will be a review of the data collected by the Task Force and will continue discussion of the draft report.

TIMES AND DATES: February 24, 1999, 8:00 a.m.–5:00 p.m.; February 25, 1999, 8:00 a.m.–5:00 p.m.; and February 26, 1999, 8:00 a.m.–11:00 a.m.

PLACE: The River Inn, Washington, DC.

TYPE OF MEETING: Open to the public.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–0113. Telephone 202–720–3803.

Done at Washington, DC, this 4th day of January 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–360 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–079–2]

Novartis Seeds and Monsanto Co.; Availability of Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Novartis Seeds and Monsanto Company's sugar beet line designated as GTSB77, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Novartis Seeds and Monsanto Company in their petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: December 23, 1998.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comment received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1998, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 98–173–01p) from Novartis Seeds (Novartis) of Research Triangle Park, NC, and Monsanto Company (Monsanto) of St. Louis, MO, (Novartis/Monsanto) seeking a determination that a sugar beet (*Beta vulgaris* L.) line designated as GTSB77, which has been genetically engineered for tolerance to the herbicide glyphosate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On August 20, 1998, APHIS published a notice in the **Federal Register** (63 FR 44604–44605, Docket No. 98–079–1) announcing that the Novartis/Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject sugar beet line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether this sugar beet line posed a plant pest risk. The comments were to have been received by APHIS on or before October 19, 1998. APHIS received one comment on the subject petition during the designated 60-day comment period. The comment was from an organization representing North American sugar beet processors, and it was in support of the petition.

Analysis

The GTSB77 sugar beet line has been genetically engineered to express an enolpyruvylshikimate-3-phosphate synthase (EPSPS) enzyme derived from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), and the [b]- D-glucuronidase (GUS) protein from *Escherichia coli.* The CP4 EPSPS enzyme confers tolerance to the herbicide glyphosate, and the GUS protein serves as a marker in the plant transformation process. The subject sugar beet line also expresses a novel protein known as 34550, which

has no known biological activity, and was apparently created when a truncated glyphosate oxidoreductase (*gox*) gene fused to sugar beet DNA. Expression of the added genes is controlled in part by gene sequences derived from the plant pathogens figwort mosaic virus and cauliflower mosaic virus. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental proprietary sugar beet A1012 line.

The subject sugar beet line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this sugar beet line conducted under APHIS permits and notifications since 1996 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of the GTSB77 sugar beet line.

Determination

Based on its analysis of the data submitted by Novartis/Monsanto, and a review of other scientific data and field tests of the subject sugar beet, APHIS has determined that sugar beet line GTSB77: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than herbicide-tolerant sugar beet developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture, or have an adverse impact on the ability to control nontarget insect pests. Therefore, APHIS has concluded that the subject sugar beet line and any progeny derived from crosses with other sugar beet varieties will be as safe to grow as sugar beets that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that the Novartis/Monsanto GTSB77 sugar beet line is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject sugar beet line or its progeny. However, importation of GTSB77 sugar beet or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the Novartis/Monsanto GTSB77 sugar beet line and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 30th day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–362 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Temporary Suspension of Direct and Guaranteed Farm Ownership and Farm Operating Loan Programs To Construct Specialized Facilities Used for Hog Production

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of temporary suspension.

SUMMARY: The Farm Service Agency (FSA) is announcing a temporary suspension, effective on the date of this notice, of direct and guaranteed farm ownership and farm operating loan financing for the construction of specialized facilities used for the production of hogs.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: James F. Radintz, Director, Farm Loan Programs Loan Making Division, Farm Service Agency, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522, telephone (202) 720–1632; email Jim__Radintz@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

A specialized facility, hereafter referred to as a facility, is defined for the purposes of this temporary suspension as any building or enclosure and related equipment specifically designed to house, raise or feed hogs of any size, age, or market class.

This action is necessary for USDA to adopt consistent policies to address the economic crisis in the pork industry. The Secretary of Agriculture has taken a variety of administrative actions to mitigate the current over-supply and historic low price conditions being experienced by hog producers. It is inconsistent with USDA policies for FSA to continue to finance construction of additional production facilities through direct loans and loan guarantees while other agencies within USDA expend resources to ameliorate over-supply conditions.

FSA is concerned that during this period of low prices, the availability of its credit programs may facilitate additional production capacity that will prolong the current hog price depression. Additional capacity is also likely to damage the prospects for long-term financial recovery in the industry. These results would be damaging to individual hog producers and the public interest. Without the moratorium, the effect will be increased Federal outlays as the time necessary for USDA amelioration of over-supply will be extended. Producers will experience continued severe financial stress and delayed financial recovery. Further, USDA is concerned that continued financial stress on hog producers may force and accelerate concentration of the production, processing, and marketing of hogs into fewer hands. Such a concentrated structure would result in a significant reduction in the diversity of agricultural production and in the independence of family farmers across the country.

In many cases, a producer would be unable to obtain the required capital for new facilities were it not for FSA's direct and guaranteed farm ownership and farm operating loan programs. Loan guarantees limit the loss risk to commercial lenders up to 95 percent, while qualified applicants may receive 100 percent financing through the direct loan program. The current price levels for hogs ready for slaughter will not generate adequate cash flow to support new loans. However, through production contracts or other means, some loan applicants may be able to meet loan repayment requirements and qualify for credit for the construction of new facilities. The Agency is

particularly mindful that the availability of an FSA loan guarantee may induce commercial lenders to finance facilities that they would otherwise not consider viable under current market conditions.

Direct and guaranteed loan applications that were received by FSA county offices on or before the date of this notice will be processed through to completion and will not be affected by this temporary suspension. Loan applications for purchase, refinancing, maintenance or repair of facilities currently in production will continue to be processed, as will loan requests for operating loans for annual production purposes. In all other cases, applications will only be processed when the government's interest will be imperiled. All other loan applications submitted to FSA county offices during the temporary suspension will be accepted but held in abeyance until the suspension is lifted.

This temporary moratorium will be lifted upon determination by the Secretary that economic and financial conditions have improved to the extent that USDA action is no longer necessary to alleviate financial stress on hog producers.

Signed in Washington, DC, on January 4, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–377 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, February 18–20, 1999. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 18–20, 1999.

ADDRESSES: The meeting will be held at the Doyle Washington Hotel, 1500 New Hampshire, NW, Washington, DC. A tour of local projects will be given on February 18 from 9:00 a.m. to 4:00 p.m.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided during the meeting and individuals who have made written requests by January 29 will have the opportunity to address the Council at those sessions. Council discussions is limited to Forest Service staff and Council members.

Dated: January 4, 1999.

Larry Payne,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 99–411 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of change.

SUMMARY: Pursuant to Section 343 of Subtitle E of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under Section 553 of Title 5, United States Code, with regard to any future technical guides that are used to carry out Subtitles A, B, and C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice of revisions to all conservation practices in Section IV of the Field Office Technical Guides (FOTG) located in Washington State.

These revisions to conservation practices in Section IV of State technical guides are subject to these provisions, since one or more could be used as part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements.

At this time, four conservation practices are being added/and or revised to Section IV of the state's FOTG's:

- Contour Buffer Strips: NRCS Code Number: 332.
- Riparian Forest Buffer: NRCS Code Number: 391.
- Nutrient Management: NRCS Code Number: 590.
- Best Management: NRCS Code Number: 595.

FOR FURTHER INFORMATION CONTACT: Frank R. Easter, Watershed Planning Team Leader, USDA–NRCS, 316 West Boone Avenue, Suite 450, Spokane, WA 99201–2348 Telephone number: (509) 323–2961.

Dated: January 4, 1999.

Frank R. Easter,

State Conservationist.

[FR Doc. 99–369 Filed 1–7–99; 8:45 am]

BILLING CODE 4410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on January 26 & 27, 1999, 9:00 a.m., at the SPAWAR Systems Center, Catalina Boulevard (Point Loma area), San Diego, California. Committee members and visitors are asked to check in at Visitor Reception before the meeting. The public session will be held on January 26 in the Training Center Conference Room. The closed session will be held in the Cloud Room, Building 33. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

January 26

Public Session 9:00 am–12:00 pm

1. Opening remarks by the Chairman.
2. Discussion on alternatives to High Performance Computers.
3. Update on export regulations, including those regarding License Exception CIV and encryption products.
4. Update on the Bureau of Export Administration Website.
5. Comments on presentations by the public.

January 26 & 27

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit

written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3886C, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: December 30, 1998.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–335 Filed 1–7–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Open Meeting

AGENCY: Office of the Under Secretary and Administrator, National Oceanic and Atmospheric Administration.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND PLACE: Thursday, January 28, 1999 from 8 AM to 4:30 PM. The meeting will take place in the main conference room at the Clarion Hotel & Suites, Downtown Convention Center, 100 SE 4th Street, Miami, FL, 33131.

AGENDA:

1. Update on FY99 NOAA science programs and budget.
2. Overview of NOAA-wide Line Office consensus research priorities with focus on cross-cutting initiatives.
3. Presentation of NOAA Strategic Planning Team examples at a general level (i.e., Sustain Health Coasts with focus on ''Harmful Algal Blooms'' and Advance Short-Term Weather Forecast Systems with focus on ''Hurricanes at Landfall'').
4. SAB Discussion on NOAA Strategic Planning related to science priorities.
5. SAB Sub-committee reports.
6. SAB Discussion on NOAA Science Policy with reference to the U.S. House of Representatives Committee on Science Report on Science Policy (''Ehler Report''), the National Association of State Universities and Land Grant Colleges (NASULGC) ''White Paper'', and the National Research Council (NRC) report on ''Research Pathways for the Next Decade''.
7. Discussion on potential SAB participation in NOAA Science panel Reviews.
8. Closing discussion on Priority Science-related issues for NOAA by SAB, with Sub-Committee Action Items, Next Steps and/or Preliminary Recommendations identified as appropriate.

PUBLIC PARTICIPATION: The meeting will be open to public participation with at least 45 minutes set aside during the meeting for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by January 18, 1999, in order to provide sufficient time for SAB review prior to meeting date. Written comments received by the SAB Executive Director after January 18 wil be distributed to the SAB, but may possibly not be reviewed prior to the meeting date. Approximately twenty (20) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served bases.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Crosby, Executive Director, Science Advisory Board, NOAA, NCHB, Rm. 5128, 14th St. & Constitution Ave., NW. Washington, DC 20230. (Phone: 202–482–2977, Fax: 202–501–3068, E-mail: MICHAEL.CROSBY@NOAA.GOV).

Dated: December 30, 1998.

D. James Baker,

Under Secretary for Oceans and Atmosphere and Administrator for NOAA.

[FR Doc. 99–371 Filed 1–7–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122898A]

Marine Mammals; File No. P595

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 1004, issued to The Whale Conservation Institute, 191 Weston Road, Lincoln, Massachusetts 01773, was amended to extend the expiration date to December 31, 1999.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 31, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–418 Filed 1–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Reevaluation of the White River to Newport, Arkansas, Navigation Project

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: This study supplements the EIS ''White River Navigation to Batesville, Arkansas'' (filed with the Council on Environmental Quality (CEQ) January 23, 1981). The purpose of this reevaluation study is to develop a plan for improving navigation capability of the lower White River, Arkansas. The work is authorized under the Water Resources Development Act (WRDA) of 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Whitlock, telephone (901) 544–3832, CEMVM–PM–P, 167 North Main Street B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Erwin Roemer, telephone (901) 544–0704, CEMVM–PM–E.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The feasibility of making navigation improvements on the White River, Arkansas, is being studied. The area of focus is the White River from Arkansas Post Canal (River Mile 10) upstream to Newport, Arkansas (River Mile 254). Studies involve reengineering and design of the existing project, possible changes to existing reservoir release schedules, defining navigation windows to increase reliability, seeking economic optimization, and minimizing adverse environmental impacts. The project was authorized originally by the Rivers and Harbors Act of 1892, although the Federal government conducted snagging operations here as early as 1870. A Navigation Report was prepared by the Memphis District in 1969, under section 107 of the Rivers and Harbors Act of 1960. This resulted in channel improvement completed in 1971. An EIS that focused on existing project maintenance was prepared by the Memphis District and filed with CEQ June 10, 1976. In 1979 the Memphis District produced a feasibility report and final EIS (''White River Navigation to Batesville, Arkansas'' May 1979; filed with CEQ January 23, 1981) regarding plans to further improve the navigation channel to a depth of 9 feet available 95% of the time and a bottom width of 200 feet. The Water Resources Development Act (WRDA) of 1986 (Pub. L. 99–662) modified the project to include mitigative and other actions related to the Fat Pocketbook Pearly Mussel and improving aquatic habitat through construction of weirs. The WRDA of 1988 deauthorized the project. The WRDA of 1996 reauthorized the project and led to the present reevaluation.

2. Reasonable Alternatives

An optimal plan of improvement will be devised including consideration of four different project perspectives: (1) Existing conditions, (2) future conditions without Federal involvement, (3) future with the authorized project, as earlier planned, and (4) future with an alternative plan including optimal improvements. These alternatives, including those with no action on behalf of the U.S. Government, will be considered.

3. The Corps Scoping Process

A public involvement program has been initiated and will be maintained throughout this reevaluation. The broad goal is to identify significant issues through an exchange of information on project-related topics. Input will be sought from the public including individuals and agencies, and from the private sector. Federally recognized American Indian tribes do not have tribal lands at or near the White River, but effort will be made to consult groups that, based on historic or ancestral presence, might have interest in the study. Status reports will be made to interested parties throughout the reevaluation. It is anticipated several public scoping meetings will be scheduled within the next year and prior to completion of draft SEIS document. These meetings will likely be at or relatively near the White River study area. The draft SEIS document should be available for review by late 1999. A number of issues are anticipated to be of interest during the scoping process. These issues are known from the original 1979 EIS and from current knowledge of the general region. These include the presence of wildlife refuge areas adjacent to the project, the Fat Pocketbook Pearly Mussel and other endangered species, weir construction to improve aquatic habitat, wildlife and aquatic habitat in general, waterfowl, water quality, hydrology, wetlands, cultural resources including potential historic shipwrecks and sites potentially of interest to American Indians, recreation, economics, disposal of dredged material, and the aesthetics of the lower White River. Both positive and negative impacts will be considered.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–397 Filed 1–7–99; 8:45 am]

BILLING CODE 3710–KS–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 4, 1999.

Kent H. Hannaman,

Leader Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: School-level Expenditure Survey Field Test.

Frequency: One time.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 525.

Burden Hours: 658.

Abstract: This field test would test the procedures and an instrument for collecting public school-level expenditure data from public school district financial officers and private school finance data from private school business officers. Currently, national school level finance data are not available from any source. The public school component will satisfy the mandate from Congress for the development of school-level expenditure data collection. School-level expenditure data would allow for the comparison of per pupil expenditures, instructional and instructional support expenditures, and some program expenditures across school types, sizes, regions, and grade levels. Comparisons of the resource allocation and private schools could also be made.

[FR Doc. 99–332 Filed 1–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.004D]

Desegregation of Public Education-Equity Assistance Center (EAC) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To award grants (cooperative agreements) to operate regional equity assistance centers to enable them to provide technical assistance and training, at the request of school boards and other responsible governmental agencies, on issues related to equity in education on the basis of race, gender, and national origin.

Eligible Applicants: A public agency (other than a State educational agency or a school board) or private, non-profit organization.

Deadline Date for Transmittal of Applications: March 1, 1999.

Deadline Date for Intergovernmental Review: April 30, 1999.

Applications Available: January 12, 1999.

Available Funds: $7,344,000.

Estimated Range of Awards: $300,000 to $1,000,000 per year.

Estimated Average Size of Awards: $730,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General. Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; except that 34 CFR 75.232 does not apply to grants under 34 CFR Part 272; and (b) the regulations for this program in 34 CFR Part 270 and 272.

Priorities

Invitational Priorities

While applicants may propose any project within the scope of 34 CFR 272.10, the Equity (Desegregation) Assistance Center Program Regulations, pursuant to 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of the invitational priorities does not receive competitive or absolute preference over the other applicants.

Invitational Priority 1—Projects that will give priority to assisting public school districts that have been released from mandatory desegregation plans and that are seeking ways to maintain or advance the voluntary desegregation of their schools.

Invitational Priority 2—Projects that will give priority to assisting public school districts that promote equity in education by providing opportunities for students to learn how to interact in positive ways with students who are different from themselves, and to overcome racial and ethnic prejudices.

For Applications or Information Contact: Sandra Shever Brown, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3C122, Washington, DC 20202–6140. Telephone (202) 260–2638. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request from the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/new.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an

electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: January 5, 1999.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–422 Filed 1–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235C]

Systems-Change Projects To Expand Employment Opportunities for Individuals With Mental or Physical Disabilities, or Both, Who Receive Public Support; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To provide financial assistance to model demonstration projects that stimulate and advance systems change in order to expand employment outcomes for individuals with mental or physical disabilities, or both, who are participants in Federal, State, and local public support programs.

Eligible Applicants: Consortia composed of, at a minimum, the State vocational rehabilitation agency, the State welfare agency, the State educational agency, the State agency responsible for administering the Medicaid program, and an agency administering an employment or employment training program supported by the U.S. Department of Labor.

Deadline for Receipt of Applications: May 11, 1999.

In order to ensure timely receipt and processing of applications, an application must be received on or before the deadline date announced in this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was: (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:00 p.m. (Eastern Time on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 74.102(b), which requires an application to be mailed, rather than received, by the deadline date.

Note: All applications must be received on or before the deadline date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C.553(b)(A), proposed rulemaking is not required.

Deadline for Intergovernmental Review: July 12, 1999.

Applications Available: January 11, 1999.

Available Funds: $2,000,000.

Estimated Range of Awards: $250,000–$600,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85.

Priority

The priority in the notice of final priority and definitions for this program, published in the **Federal Register** on July 8, 1998 (63 FR 37016), applies to this competition.

This priority is now authorized under Title III, section 303(b) of the Rehabilitation Act of 1973, as amended.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3317, Switzer Building, Washington, DC 20202–4725. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Pedro Romero, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3316, Switzer Building, Washington, DC 20202–4725. Telephone: (202) 205–9797. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: Title III, section 303(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3))

Dated: December 22, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–420 Filed 1–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–09; Next Generation Internet—Applications, Network Technology, and Network Testbed Partnerships

AGENCY: Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (OASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Next Generation Internet—Applications, Network Technology, and Network Testbed Partnerships program. The Next Generation Internet (NGI) is a multi-agency federal research and development program to develop, test, and demonstrate advanced networking technologies and applications. This particular research notice invites research applications for Applications, Network Technology, and Network Testbed Partnerships to focus on integrating advanced applications with leading edge network research to test wide area data intensive collaborative computing technologies through partnerships between the developers of applications and network researchers.

DATES: Applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–09, should be received by DOE by 4:30 P.M., E.S.T., February 12, 1999. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within several days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 P.M., E.S.T., March 31, 1999, in order to be accepted for merit review and to permit timely consideration for award in fiscal year 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–09, should be sent by E-mail to scott@er.doe.gov.

Formal applications, referencing Program Notice 99–09, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–09. This address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial overnight delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Mary Anne Scott, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6368, E-mail: scott@er.doe.gov, fax: (301) 903–7774. The full text of Program Notice 99–09 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html

SUPPLEMENTARY INFORMATION: The NGI initiative is a multi-agency Federal research and development (R&D) program that is developing advanced networking technologies, developing revolutionary applications that require advanced networking, and demonstrating these capabilities on testbeds that are 100 to 1,000 times faster end-to-end than today's Internet. Partnerships among academia, industry, and governments (Federal, state, local, and foreign) that will keep the U.S. at the cutting-edge of information and communications technologies are encouraged. (Details on submitting applications involving partnerships can be found in the Application Guide for the Office of Science Financial Assistance Program referenced below). The strategic R&D investments are coordinated across the agencies involved and are focused to produce an environment where advanced networking R&D breakthroughs are possible. Information concerning NGI can be found at http://www.ngi.gov/.

Topic Details

DOE's current core programs in network and application research are intended to enhance the Department's ability to satisfy mission requirements through advanced technologies such as distributed computing, national collaboratories, remote access to facilities, and remote access to petabyte-scale datasets with complex internal structure. The DOE NGI Applications, Network Technology and Network Testbed Partnerships research will focus on integrating advanced applications with leading edge network research to test wide area data intensive and collaborative computing technologies. The objective of this research is to enable more efficient and smarter use of network resources, as well as to support higher speeds (that is, end-to-end capacity).

The DOE encourages the submission of applications for Applications, Network Technology and Network Testbed Partnerships to address the issues and challenges required to create persistent wide area data intensive and collaborative computing testbed networks. These partnerships should combine the efforts of applications programmers, middleware developers, and network researchers to create persistent testbed networks that can support the diverse set of DOE mission critical applications described below.

The important issues for applications programmers are:

- Support for advanced applications that address the needs of the DOE community including, but not limited to, distributed visualization of large data sets, remote access to Petabyte scale data archives of high energy physics experiments, and distributed collaborations to study functional genomics.
- Definition of what network services (e.g., bandwidth, latency, QoS) are required.
- Definition of what middleware services are required to permit these applications to effectively run over wide area networks.

The important issues for the middleware developers are:

- Provide a rich set of features that applications can select and use to obtain the level of service they need to operate.
- Define the features and the API's necessary to allow the application and middleware to communicate.
- Define the specific network service calls that properly provision the underlying network for the applications needs.
- Tight integration of the middleware API's with the applications and also the physical services provided by the network layer.

The important issues for the network researchers are:

- Integration of SAN, LAN, MAN, and WAN technologies to create distributed collaboratories.
- High performance network interfaces for super-computers to enable Gbps data rates between communicating applications.
- Management and control of network components (e.g., routers, switches, WDM's) to dynamically change network configurations in reasonable time frames (minutes to hours).
- Integration of Differentiated Services, or other Quality of Service functions, into wide area networks.
- Integration of these new technologies into the existing production networks as rapidly as possible without compromising the existing production network services.

Running advanced applications over leading edge networks in a persistent manner requires research and

development in many areas. It also requires the joint efforts of applications programmers, middleware developers, and network researchers to create persistent testbed networks that can support the diverse set of goals described above. This program notice seeks joint applications from these three communities to form partnerships to address the issues and challenges required to create these persistent wide area data intensive and collaborative computing testbed networks. Software tools developed are expected to interoperate with existing middleware tools as well as those under development.

Program Funding

It is anticipated that up to $4 million will be available for multiple awards to be made in FY 1999 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $1,500,000 to $2,000,000 total costs.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Next Generation Internet—University Network Technology Testbeds Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 20 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short vitaes.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.)

Issued in Washington, DC on December 22, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–390 Filed 1–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–08; Next Generation Internet—Research in Basic Technologies

AGENCY: Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (OASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Next Generation Internet—Research in Basic Technologies program. The Next Generation Internet (NGI) is a multi-agency federal research and development program to develop, test, and demonstrate advanced networking technologies and applications. This particular research notice invites research applications for innovative, fundamental networking research to support DOE-specific activities that include, but are not limited to, very high speed interfaces to connect devices to networks; protocols and techniques for coordinating multiple, heterogeneous network-attached devices; software to allow applications to adapt to changing network conditions; and network performance characterization.

DATES: Applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–08, should be received by DOE by 4:30 P.M., E.S.T., February 12, 1999. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within several days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 P.M., E.S.T., March 31, 1999, in order to be accepted for merit review and to permit timely consideration for award in fiscal year 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–08, should be sent by E-mail to hitchcock@er.doe.gov.

Formal applications, referencing Program Notice 99–08, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–08. This address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial overnight delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dan Hitchcock, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6767, E-mail: hitchcock@er.doe.gov, fax: (301) 903–7774. The full text of Program Notice 99–08 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html

SUPPLEMENTARY INFORMATION: The NGI initiative is a multi-agency Federal research and development (R&D) program that is developing advanced networking technologies, developing revolutionary applications that require advanced networking, and demonstrating these capabilities on

testbeds that are 100 to 1,000 times faster end-to-end than today's Internet. Partnerships among academia, industry, and governments (Federal, state, local, and foreign) that will keep the U.S. at the cutting-edge of information and communications technologies are encouraged. (Details on submitting applications involving partnerships can be found in the Application Guide for the Office of Science Financial Assistance Program referenced below). The strategic R&D investments are coordinated across the agencies involved and are focused to produce an environment where advanced networking R&D breakthroughs are possible. Information concerning NGI can be found at http://www.ngi.gov/.

Topic Details

DOE's current core programs in network and application research are intended to enhance the Department's ability to satisfy mission requirements through advanced technologies such as distributed computing, national collaboratories, remote access to facilities, and remote access to petabyte-scale datasets with complex internal structure. The DOE NGI network research described in this notice will focus on developing network-aware middleware and application friendly tools and capabilities for its applications, as well as continuing research in high speed end system interfaces, network management, and differentiated services. The objective of this research is to enable more efficient and smarter use of network resources, as well as to support higher speeds (that is, end-to-end capacity).

The DOE encourages the submission of applications for innovative, fundamental networking research. The DOE particularly encourages research in the following areas:

- Congestion and flow control techniques to provide applications with easy-to-use tools, capabilities, and interfaces that make efficient use of advanced infrastructure; for example, reliable ordered multicast.
- Multi-gigabit end system interfaces, analyzers, and switches along with mechanisms to reduce operating system overhead for data transfers.
- Protocols and techniques for coordinating multiple, heterogeneous network-attached devices.
- Techniques to support secure and fair user access to and use of network resources, provide secure inter-network peering, perform accounting/costing, and provide secure access to on-line facilities.
- Mechanisms to provide application controlled Class of Service and Quality of Service.
- Techniques for IP, ATM, and WDM network monitoring and analysis.
- Application-friendly, network-aware middleware to provide IP, ATM, and WDM resource and admission control, scheduling, management, prioritization, accounting (such as bidding and costing), authentication, analysis, monitoring, assurance and debugging mechanisms.

A theme common to these research topics is the development of ''network aware'' and infrastructure manipulating software in middleware, including libraries, system software and tools, that will be available to the application through easy-to-use-application interfaces. Research may focus on providing the ''network aware'' middleware support required by DOE applications. These applications will be heavily collaborative in nature and will concurrently use distributed resources such as supercomputers, high end storage systems with extremely large scientific data sets, unique on-line facilities, and massive, multi-dimensional datasets in tele-immersive environments. Software tools developed are expected to interoperate with existing middleware tools as well as those under development.

Program Funding

It is anticipated that up to $2 million will be available for multiple awards to be made in FY 1999 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $200,000 to $300,000 total costs.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Next Generation Internet—Research in Basic Technologies Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 20 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short vitaes.

(The catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.)

Issued in Washington, DC on December 22, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–391 Filed 1–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–10; Next Generation Internet—University Network Technology Testbeds

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (OASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for the Next Generation Internet—University Network Technology Testbeds program. The Next Generation Internet (NGI) is a multi-agency federal research and development program to develop, test, and demonstrate advanced networking technologies and applications. This particular research notice invites research applications for DOE-university technology testbeds to focus on developing and testing techniques and technologies to allow advanced network services to be deployed across interconnected networks that are independently administered.

DATES: Applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–10, should be received by DOE by 4:30 P.M., E.S.T., February 12, 1999. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within several days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 P.M., E.S.T., March 31, 1999, in order to be accepted for merit review and to permit timely consideration for award in fiscal year 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–10, should be sent by E-mail to seweryni@er.doe.gov.

Formal applications, referencing Program Notice 99–10, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–10. This address must also be used when submitting applications by U.S. Postal Service Express Mail, any other commercial overnight delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: George Seweryniak, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–0071, E-mail: seweryni@er.doe.gov, fax: (301) 903–7774. The full text of Program Notice 99–10 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html

SUPPLEMENTARY INFORMATION: The NGI initiative is a multi-agency Federal research and development (R&D) program that is developing advanced networking technologies, developing revolutionary applications that require advanced networking, and demonstrating these capabilities on testbeds that are 100 to 1,000 times faster end-to-end than today's Internet. Partnerships among academia, industry, and governments (Federal, state, local, and foreign) that will keep the U.S. at the cutting-edge of information and communications technologies are encouraged. (Details on submitting applications involving partnerships can be found in the Application Guide for the Office of Science Financial Assistance Program referenced below). The strategic R&D investments are coordinated across the agencies involved and are focused to produce an environment where advanced networking R&D breakthroughs are possible. Information concerning NGI can be found at http://www.ngi.gov/.

Topic Details

DOE's current core programs in network and application research are intended to enhance the Department's ability to satisfy mission requirements through advanced technologies such as distributed computing, national collaboratories, remote access to facilities, and remote access to petabyte-scale datasets with complex internal structure. It is critical to the Department that these advanced technologies be available not only to sites directly connected to the Department's backbone network Esnet, but also to scientists at universities and industrial partners with other types of connections to the Internet who are members of research communities important to DOE missions. The DOE NGI network research described in this notice will focus on developing and testing techniques and technologies to allow advanced network services to be deployed across interconnected networks that are independently administered.

The DOE encourages the submission of applications for University Network Technology Testbeds to address the issues of deploying advanced network services end-to-end across interconnected autonomous networks. These partnerships can include individual universities, network interconnection points such as Gigapops, and backbone network service providers. It is expected that these partnerships will work with ESnet to develop integrated testbeds and the associated management tools.

Important issues to be addressed in these testbeds include:

- Deployment of advanced differentiated services technology across autonomous networks both when the priority flow represents a small fraction of the available capability and when the priority flow is a significant fraction of the available capability;
- Development and testing of advanced tools to manage ''peering'' of networks with advanced services;
- Cross-domain implementations of security and authentication technologies;
- Development and testing of network performance monitoring and characterization software which applications can use in this environment to optimize their performance; and
- Development of policy frameworks and specification languages to facilitate the negotiation of capabilities across autonomous system boundaries.

Program Funding

It is anticipated that up to $5 million will be available for multiple awards to be made in FY 1999 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. Annual budgets are expected to range from $500,000 to $2,000,000 total costs.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Next Generation Internet—University Network Technology Testbeds Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please

note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 20 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short vitaes.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on December 22, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–392 Filed 1–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; PV Balance of System Reliability Analysis: Supplemental Announcement (05)

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development, and Demonstration for Renewable Energy and Energy Efficiency Technologies, DE–PS36–99GO10383.

SUMMARY: The Photovoltaic (PV) Division of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is supporting the issuance of this Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, dated November 9, 1998. Under the Supplemental Announcement, DOE is soliciting applications to analyze the U.S. Navy's Power Electronic Building Block (PEBB) technology to determine if it is a viable option for PV applications and, if so, establish a set of recommendations to the PV industry regarding methods to transfer this technology. Proposals are requested to conduct an assessment and analysis of power integrated circuits/PEBB devices for PV Balance of System (BOS) applications. The work will include assessments of the applicability, availability, and compatibility of the power integrated circuits to insure that the devices developed in the PEBB program may also be suited for BOS PV power conditioner applications with minimal modifications. Awards under this Supplemental Announcement will be Grants with a term of up to 12 months. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be $75,000.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement the week of December 7, 1998. The closing date of the Supplemental Announcement is January 15, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on December 21, 1998.

Dated: December 21, 1998.

Ruth Adams,

Contracting Officer.

[FR Doc. 99–393 Filed 1–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Innovative Technologies for Conversion of Biomass to Transportation Fuels: Supplemental Announcement (02)

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development, and Demonstration for Renewable Energy and Energy Efficiency Technologies, DE–PS36–99GO10383.

SUMMARY: The Office of Fuels Development of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is supporting the issuance of this Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, dated November 9, 1998. Under the Supplemental Announcement, DOE is soliciting applications to support innovative technologies that will increase the efficiency or lower the cost of producing and converting biomass to transportation fuels. The Office of Fuels Development formulates, executes, and coordinates a balanced and customer-focused national program of research, development, and demonstration of technologies for the production of transportation fuels from biomass. The biomass resources considered include agricultural residues, forestry wastes, and crops grown specifically for energy applications. Proposals are sought in areas of innovative research and development of the following: plants capable of high biomass yields; systems

for culture, harvests, and handling of these high yielding plants; enzymes and fermentation organisms for the production of ethanol from biomass; approaches for converting cellulosic biomass to ethanol. Awards under this Supplemental Announcement will be Cooperative Agreements with a term of up to 12 months. Subject to funding availability, it is anticipated the total DOE funding available under this Supplemental Announcement will be $600,000, with individual awards not to exceed $150,000 of DOE funding. A minimum Cost Share of 20% of the total project cost is required under this Supplemental Announcement.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement the week of December 7, 1998. The closing date of the Supplemental Announcement is January 29, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on December 21, 1998.

Dated: December 21, 1998.

Ruth E. Adams,

Contracting Officer.

[FR Doc. 99–394 Filed 1–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–127–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

January 4, 1999.

Take notice that on December 18, 1998, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–127–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for certification of the Stetson Hills Delivery Point (Stetson Hills) in Maricopa County Arizona, under El Paso's blanket certificate issued in Docket No. CP82–435–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states it installed Stetson Hills under Section 311(a) and has exclusively used this delivery point for the firm transportation and delivery of natural gas under part 284, Subpart B on behalf of Southwest Gas Corporation (Southwest). El Paso requests certification so it can provide both part 384, Subpart B and Subpart G transportation to Stetson Hills.

El Paso reports that Stetson Hills, which consists of one 2-inch O.D. tap and valve assembly, with appurtenant facilities, was put into service on September 29, 1998. El Paso relates that the total cost of the installation was approximately $12,400, which Southwest completely reimbursed to El Paso.

El Paso states that it will continue to provide the same firm service to Stetson Hills under its August 9, 1991, firm transportation service agreement with Southwest. El Paso indicates the quantity of gas to be transported on a firm basis is estimated to be 99,287 Mcf annually and 272 Mcf per day with the end use of the gas being residential. El Paso states that this authorization is not prohibited by its existing tariff. El Paso also says it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to El Paso's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–340 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–421–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1999.

Take notice that on December 23, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheets proposed to become effective November 2, 1998:

Substitute First Revised Sheet No. 60D

Iroquois states that this sheet was submitted in compliance with the Commission's letter order issued on December 8, 1998 in Docket No. RP98–421–000. The tariff sheet included herewith reflects changes in Iroquois' notification to shippers of intra-day bumping.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–347 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP–99–135–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 4, 1999.

Take notice that on December 22, 1998, Koch Gateway Pipeline Company (Koch), 20 Greenway Plaza, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–135–000 a request pursuant to Sections 157.205 and 157.211 of the commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Ouachita Parish, Louisiana, under Koch's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to construct and operate delivery point facilities consisting of an 8-inch tap, meter station and approximately 0.6 mile of 10-inch pipeline connecting to Koch's existing transmission line designated as Index 156. It is asserted that Koch would use the facilities to deliver gas transported for Koch Energy Trading, Inc., a market affiliate, to Koch Power Louisiana, L.L.C., a wholesale seller of electric power, which is the end-user and an affiliate. It is explained that Koch would deliver 15,000 MMBtu equivalent of natural gas on an average day and up to 60,000 MMBtu equivalent on a peak day on an interruptible basis under Koch's ITS Rate Schedule. It is estimated that the cost of the facilities would be $330,000. Koch states that the installation of the delivery point would not have a significant impact on Koch's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–342 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–410–003]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 4, 1999.

Take notice that on December 22, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective October 19, 1998.

Fifth Revised Volume No. 1
2nd Sub Fourth Revised Sheet No. 1805
Seventh Revised Sheet No. 2707

Koch filed the above referenced tariff sheets to respond to the Commission's Letter Order Pursuant to 375.307(b)(1) and (b)(3) issued on December 9, 1998 in Docket No. RP98–410.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–346 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Mountain Petroleum Corporation; Notice of Petition for Dispute Resolution

January 4, 1999.

Take notice that, on December 23, 1998, Mountain Petroleum Corporation (Mountain) filed a letter disputing the amount Mountain owes K N Interstate Gas Transmission Company (KNI) in Kansas ad valorem tax reforms, i.e., a petition for dispute resolution regarding KNI's refund claim. On January 28, 1998, the Commission issued an *Order Clarifying Procedures* [82 FERC ¶ 61,059 (1998)]. In that order, the Commission stated that producers (i.e., First Sellers) could file dispute resolution requests from the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds the producer owes. Mountain's petition is on file with the Commission and open to public inspection.

The Commission issued an order on September 10, 1997, in Docket No. RP97–369–000 *et al.*, [80 FERC ¶ 61,264 (1997); rehearing denied 82 FERC ¶ 61,058 (1998)] directing First Sellers to refund Kansas ad valorem tax reimbursements, with interest, to the appropriate pipeline(s), for the period from 1983–1988. The September 10 order also directed the pipelines to serve each First Seller with a Statement of Refunds Due.

KNI served Mountain with a $15,848.52 refund claim ($5,583.75 of principal and $10,264.77 of interest). KNI's May 18, 1998 Refund Report to the Commission shows that Mountain paid KNI $5,778,61, leaving a balance due KNI of $10,069.91.

In its December 23 letter disputing KNI's refund claim, Mountain states that it calculated and paid KNI $5,778.61 ($1,713.02 in principal and $4,065.59 in interest), and that this sum is the correct Kansas ad valorem tax refund amount Mountain owed KNI. With respect to the $10,069.91 remainder of KNI's refund claim, Mountain contends that it must be demonstrated that the amount Mountain received (inclusive of tax reimbursements) exceeded the applicable maximum lawful price, before refunds may be ordered.

Any person desiring to comment on or make any protest with respect to the above-referenced petition should, on or before January 25, 1999, file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a

motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–344 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–190–000]

National Fuel Gas Distribution Corporation; Notice of Filing

January 4, 1999.

Take notice that on December 22, 1998, National Fuel Gas Distribution Corporation (National Fuel Distribution) tendered for filing a request for limited waiver of the Commission's ''shipper must have title'' policy as it relates to transportation services provided to National Fuel Gas Distribution by interstate pipelines.

National Fuel Gas Distribution states proceedings on its application to unbundle its distribution services are under way at the Pennsylvania Public Utility Commission (PaPUC). National Fuel Distribution states that the request for limited waiver is necessary to enable National Fuel Distribution to implement its retail unbundling program. National Fuel Distribution further states that copies of the filing have been mailed to all parties in the PaPUC unbundling proceeding and each of National Fuel Distributor's interstate pipeline suppliers.

Any person desiring to be heard or to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–348 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–192–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1999.

Take notice that on December 23, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective January 23, 1999.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reduce the notice period from 15 days to 5 business days for firm shippers to request changes in their primary points of receipt and delivery and to make other housekeeping changes to reflect clarifications or correct inadvertent omissions. Based on shipper requests and Panhandle's improved administrative process, Panhandle is able to reduce the processing time for firm shippers to request changes in primary points of receipt and delivery. Shippers will be allowed to request such changes twice in any thirty day period giving them additional flexibility to manage their needs.

Panhandle further states that clarifications are needed in two rate schedules. These clarifications do not change the characteristics of the service or the current administration of the rate schedules. The revised tariff sheets clarify Rate Schedule SCT to provide that the transmission charge applies only up to shipper's MDCQ and modify Rate Schedule FS to correct the date by which a shipper must reduce its storage quantity to 20% of the Maximum Stored Quantity from April 1, the end of the traditional withdrawal cycle, to the end of the withdrawal period specified in the service agreement. The flexibility of Rate Schedule FS allows shippers to select non-traditional injection and withdrawal cycles. Further housekeeping changes revise Section 2.4(f) of the General Terms and Conditions to clarify the information available on the electronic bulletin board relating to the current posting requirements of Order 566 and to correct references.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–350 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–128–000]

Steuben Gas Storage Company; Notice of Request Under Blanket Authorization

January 4, 1999.

Take notice that on December 21, 1998, Steuben Gas Storage Company (Steuben), 500 Renaissance Center, Detroit, Michigan 48243, filed a prior notice request with the Commission in Docket No. CP99–128–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the natural gas volumes and increase the maximum stabilized reservoir pressure at the Adrian gas storage field in Steuben County, New York, under Steuben's blanket certificate issued in Docket No. CP96–119–000, *et al.*, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Steuben proposes to increase the maximum volume of natural gas authorized to be stored in the Adrian gas storage field from 8,200 MMcf to 8,500 MMcf and to increase the maximum stabilized reservoir pressure from 2,188 psia to 2,202 psia. Steuben states that it would not construct any new facilities in this proposal. Steuben also states that it is now apparent that

the Adrian gas storage field's pore volume, and thus, its storage capacity is slightly greater than was previously estimated and certificated by the Commission in docket No. CP89–1684–000. Steuben further states that rounding up to a new maximum inventory of 8,500 MMcf would require a slight increase in the certificated maximum pressure.

Any person or the Commission's staff may, within 45 days after the commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–341 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–191–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1999.

Take notice that on December 23, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective January 23, 1999.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to: (1) reduce the notice period from 15 days to 5 business days for firm shippers to request changes in their primary points of receipt and delivery; and (2) make other housekeeping changes to reflect clarifications or correct inadvertent omissions. Based on shipper requests and Trunkline's improved administrative process, Trunkline is able to reduce the processing time for firm shippers to request changes in primary points of receipt and delivery. Shippers will be allowed to request such changes twice in any thirty day period giving them additional flexibility to manage their needs.

Trunkline further states that housekeeping changes are required to clarify the language in the billing section of several Trunkline rate schedules. Trunkline is not changing its current billing procedures for these rate schedules. The revised tariff sheets clarify the usage charge under Rate Schedule SST applies only up to shipper's Maximum Daily Quantity (MDQ), or Maximum Daily Receipt Obligation (MDRO) for gathering, (thereafter the overrun rate applies in accordance with the current tariff language) and that gathering overrun charges apply to quantities in excess of shipper's MDRO at points of receipt designated as gathering under Rate Schedules FT, SST, EFT, QNT and LFT. Other housekeeping changes are required to: (1) update the point of origin of Trunkline's pipeline system on the preliminary statement; (2) modify the definition of eligible points of delivery in Section 2.5 of Rate Schedule NNS–2 to be consistent with the change in the applicability of Rate Schedule NNS–2. Pursuant to Commission authorization dated March 3, 1995 in Docket No. RP95–151–000, service under this rate schedule is no longer restricted to the historical sales customers under Trunkline's former tariff.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–349 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Viking Gas Transmission Company; Notice of Application

January 4, 1999.

Take notice that on December 31, 1998, Viking Gas Transmission Company (Viking) 825 Rice Street, St. Paul, Minnesota 55117, filed an application in Docket No. CP99–140–000 pursuant to Section 7(b) of the Natural Gas ACt for permission and approval to abandon certain facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

On September 3, 1998, Viking filed an application in Docket No. CP99–761–000 to construct and operate five segments of 24-inch pipeline loop totaling 45 miles, to install certain above-ground facilities, including crossover assemblies, and to establish a new meter station (the 1999 Expansion). The 1999 Expansion, located in 6 counties in Minnesota, is designed to meet new requests for transportation service and to augment system reliability and operational flexibility.

In conjunction with the 1999 Expansion project, Viking proposes in the subject application to abandon its existing Angus crossover assembly located in Polk County, Minnesota. The crossover facilities consist of a 12-inch sidevalve, a 8-inch blowdown valve, and approximately 80 feet of associated 24-inch pipe together with related valves and fittings. The facilities were installed in 1997, as authorized in Docket No. CP97–93–000 as part of an earlier looping project.[1] Since terminus of the earlier loopline will now be extended southward as a result of looping proposed in Docket No. CP98–761–000, the subject crossover assembly is no longer needed. A new crossover assembly will be installed at the terminus of the Angus loopline proposed in the 1999 Expansion. Removing the Angus crossover assembly is estimated to cost approximately $6,000. The abandonment is an integral part of the 1999 Expansion and the removal will take place concurrent with

[1] 79 FERC ¶61,136 (1997).

the new construction. Viking states that the proposed abandonment would not adversely affect system operations or affect service to customers.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.311) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing or any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Viking to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–339 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–14–000, et al.]

ECK Generating, S.R.O., et al.; Electric Rate and Corporate Regulation Filings

December 31, 1998.

Take notice that the following filings have been made with the Commission:

1. ECK Generating, S.R.O.

[Docket No. EG99–14–000]

Take notice that on December 18, 1998, ECK Generating, S.R.O. (Applicant), with its principal offices at Kladno, Dubska, Teplarna 272 03, filed with the Federal Energy Regulatory Commission (the Commission) an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The Amendment supplements the Application filed on October 23, 1998, to provide additional information.

The Application and Amendment state that the Applicant is a limit liability company organized under the laws of the Czech Republic that will own a portion of and lease a portion of a 344 MW generating plant near the City of Kladno in the Czech Republic. Applicant states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an undivided interest in this facility and selling electric energy at wholesale and making permitted foreign retail electric sales.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Little Bay Power Corporation

[Docket No. EG99–49–000]

Take notice that on December 22, 1998, Little Bay Power Corporation, a corporation organized under the laws of the State of New Hampshire, tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant states that it is engaged directly and exclusively in the business of owning a 2.9 percent undivided interest (the Seabrook Interest) in the Seabrook Nuclear Power Plant (the Seabrook Plant) and selling at wholesale its entitlement to a *pro rata* share of the capacity and energy from the Seabrook Plant. The Seabrook Plant is a nuclear-fueled electricity generating plant located in Seabrook, New Hampshire, consisting of a pressurized water reactor with a rated capacity of 1,150 megawatts. The Seabrook Plant includes interconnecting transmission facilities that interconnect the Seabrook Plant with the transmission facilities of Public Service Company of New Hampshire. The Applicant requests a determination that, the Applicant will be an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

The Applicant further states that copies of the application were served upon the Securities and Exchange Commission and the New Hampshire Public Utilities Commission.

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zhengzhou Huadeng Power Company Ltd.

[Docket No. EG99–50–000]

Take notice that on December 23, 1998, Zhengzhou Huadeng Power Company Ltd. (Huadeng), a Chinese

cooperative joint venture, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Huadeng is a company established for the purpose of owning a 55 MW coal-fired power project in Dengfeng Municipality, Henan Province (Project) for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in the People's Republic of China. The sponsors of the Project and their respective interests are as follows: Henan Dengfeng Power Group Company Limited (Power Group) (51%) and Western Resources International Limited (49%).

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Zhengzhou Huaxin Power Company Ltd.

[Docket No. EG99–51–000]

Take notice that on December 23, 1998, Zhengzhou Huaxin Power Company Ltd. (Huaxin), a Chinese cooperative joint venture, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Huaxin is a company established for the purpose of owning a 55 MW coal-fired power project in Dengfeng Municipality, Henan Province (Project) for the generation and sales of wholesale electric power to utilities and retail electric power to industrial end users in the People's Republic of China. The sponsors of the Project and their respective interests are as follows: Henan Dengfeng Power Group Company Limited (Power Group) (51%) and Western Resources International Limited (49%).

Comment date: January 22, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Washington Water Power Company

[Docket No. ER98–3439–000]

Take notice that on December 28, 1998, Washington Water Power Company (WWP), amended its filing of a revision/replacement to its Rate Schedule FERC No. 148 with the Federal Energy Regulatory Commission.

WWP requests an effective date of June 22, 1998.

A copy of this filing has been served upon The Spokane Tribe of Indians, The United States Bureau of Reclamation, and the Washington Utilities and Transportation Commission.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER99–597–000]

Take notice that on December 28, 1998, New England Power Company (NEP), tendered for filing an amendment to its November 13, 1998, filing in the above-referenced docket. The November 13th filing concerned the code of conduct governing the relationship between NEP and its affiliates.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Great Bay Power Corporation

[Docket No. ER99–1042–000]

Take notice that on December 28, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Select Energy, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective December 22, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER99–1043–000]

Take notice that on December 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Power Purchase Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER99–1044–000]

Take notice that on December 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amendment to its a Power and Energy Agreement with Municipal Energy Agency of Mississippi, which was filed in Docket No. ER99–218 in compliance with the Commission's order in Clarksdale Public Utilities Commission v. Entergy Services, Inc., 85 FERC ¶ 61,268 (1998). The amendment addresses compensation for losses.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER99–1045–000]

Take notice that on December 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a modified form of Network Integration Transmission Service Agreement with itself, to cover deliveries under its Power and Energy Agreement with Municipal Energy Agency of Mississippi. The Power and Energy Agreement was filed in Docket No. ER99–218 in compliance with the Commission's order in *Clarksdale Public Utilities Commission* v. *Entergy Services, Inc.*, 85 FERC ¶ 61,268 (1998).

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–1046–000]

Take notice that on December 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., tendered for filing the Second Amendment to the Agreement for Wholesale Power Service between Entergy Arkansas, Inc., and Farmers Electric Cooperative Corporation.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Texas-New Mexico Power Company

[Docket No. ER99–1047–000]

Take notice that on December 28, 1998, Texas-New Mexico Power Company (TNP), tendered for filing under TNP's Market-Based Rate Tariff an executed Service Agreement for Negotiated Market-Based Rates and companion Power Sale Agreement with Southwestern Public Service Company (SPS) as the customer.

TNP has requested an effective date of January 1, 1999, for capacity and energy

sales by TNP to SPS at market-based rates under these Agreements. Service to be provided under these Agreements is for one year.

A copy of this filing was served upon SPS.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Texas-New Mexico Power Company

[Docket No. ER99–1048–000]

Take notice that on December 28, 1998, Texas-New Mexico Power Company (TNP), tendered for filing a Network Operating Agreement and companion Service Agreement for Network Integration Transmission Service between TNP and Southwestern Public Service Company (SPS). By these Agreements, TNP will provide continued network integration network transmission service to SPS for a five-year period, starting on January 1, 1999, pursuant to TNP's Open Access Transmission Tariff on file with the Commission.

TNP requests an effective date of January 1, 1999, for service to commence under these Agreements. TNP requests waiver of the Commission's 60-day notice period to permit these Agreements to take effect on January 1.

A copy of this filing was served upon SPS.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Select Energy, Inc.

[Docket No. ER99–1049–000]

Take notice that on December 28, 1998, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with the Constellation Power Source under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the Constellation Power Source.

NUSCO requests that the Service Agreement become effective December 1, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., the Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1050–000]

Take notice that on December 28, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 43, to add three (3) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis.

Allegheny Power requests a waiver of notice requirements to make service available as of January 1, 1999, to Monongahela Power Company, The Potomac Edison Company and West Penn Power Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Washington Water Power Company

[Docket No. ER99–1051–000]

Take notice that on December 28, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an amendment to the Firm Point-to-Point Service Agreement with Clearwater Power Company under WWP's Open Access Transmission Tariff, Second Revised Volume No. 8.

WWP requests an effective date of November 29, 1998.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Salko Energy Services, Inc.

[Docket No. ER99–1052–000]

Take notice that on December 28, 1998, Salko Energy Services, Inc. (SES), petitioned the Commission for acceptance of SES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SES intends to engage in wholesale electric power and energy purchases and sales as a marketer. SES is not in the business of generating or transmitting electric power. SES has no affiliates.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Upper Peninsula Power Company

[Docket No. ER99–1053–000]

Take notice that on December 28, 1998, Upper Peninsula Power Company (UPPCo), tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended and restated Interconnection Agreement executed between UPPCo and the Marquette Board of Light and Power (Board). The Interconnection Agreement is amended to reflect the sale of a tie line and related facilities from UPPCo to the Board.

UPPCO requests that the Commission accept this amended and restated Interconnection Agreement for filing effective on the same date as Commission approves the Application filed by UPPCo in Docket No. EC99–13–000 to transfer the subject transmission facilities.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER99–1054–000]

Take notice that on December 28, 1998, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements, with UtiliCorp United Inc., dated December 18, 1998, (one for non-firm and one for short-term firm point-to-point transmission service) under the terms of PNM's Open Access Transmission Service Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Company of New Mexico

[Docket No. ER99–1055–000]

Take notice that on December 28, 1998, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with Utah Municipal Power Agency (dated December 22, 1998). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Utah Municipal Power Agency and to the New Mexico Public Utility Commission.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of New Mexico

[Docket No. ER99–1056–000]

Take notice that on December 28, 1998, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement (dated December 3, 1998) with Enron Power Marketing, Inc. (Enron), for short-term firm point to point transmission service under PNM's Open Access Transmission Tariff; and a unilaterally executed service agreement (dated December 22, 1998) with Enron for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Enron and to the New Mexico Public Utility Commission.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER99–1057–000]

Take notice that on December 28, 1998, Niagara Mohawk Corporation (Niagara Mohawk), that effective the January 11, 1999, Rate Schedule FERC No. 219, effective date June 19, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon CMEX Energy, Inc.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corp.

[Docket No. ER99–1058–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing effective January 11, 1999, Rate Schedule FERC No. 244, effective date May 13, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Noram Energy Services.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER99–1059–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective January 11, 1999, Rate Schedule FERC No. 246, effective date May 13, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon MidCon Power Services Corporation.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Niagara Mohawk Power Corporation

[Docket No. ER99–1060–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective December 11, 1998, Rate Schedule FERC No. 221, effective date May 18, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Rainbow Energy Marketing Corporation.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER99–1061–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective January 11, 1999, Rate Schedule FERC No. 217, effective date May 31, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Utility 2000 Energy Corporation.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Niagara Mohawk Power Corporation

[Docket No. ER99–1062–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective December 11, 1998, Rate Schedule FERC No. 211, effective date February 22, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon CNG Gas Services Corporation.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Niagara Mohawk Power Corporation

[Docket No. ER99–1063–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective the January 11, 1999, Rate Schedule FERC No. 240, effective date February 12, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon KN Marketing, Inc.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Niagara Mohawk Power Corporation

[Docket No. ER99–1064–000]

Take notice that on December 28, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective January 11, 1999, Rate Schedule FERC No. 239, effective date January 2, 1996, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Koch Power Services, Inc.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Unitil Power Corporation

[Docket No. ER99–1065–000]

Take notice that on December 28, 1998, Unitil Power Corporation in accordance with Section 35.3, 18 CFR 35.3, the Unitil Companies, Concord Electric Company, Exeter & Hampton Electric Company and Unitil Power Corp. (collectively Unitil), notified the Commission, that due to developments that transpired at the state level, it will not move the Amended System Agreement among Unitil Power Corp. (Amended System Agreement), into effect on March 1, 1999.

Copies of the filing were served upon all parties to the underlying proceeding.

Comment date: January 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–351 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention

January 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Declaration of Intention.

b. *Docket No:* DI99–2–000.

c. *Date Filed:* December 7, 1998.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Gartina Creek Hydro Project.

f. *Location:* Located on Gartina Creek, 3 miles southeast of Hoonah on Chuchag of Island, Alaska, in sections 2 and 11, T. 44 S., R. 61 E., Copper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).

h. *Applicant Contact:* Robert S. Grimm, President, Alaska Power & Telephone Company, 191 Otto Street, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733.

i. *FERC Contact:* Henry G. Ecton, (202) 219–2678.

j. *Comment Date:* February 19, 1999.

k. *Description of Project:* The proposed run-of-river project will consist of: (1) a 27-foot-high, 280-foot-long concrete gravity dam; (2) a 190-foot-long penstock; (3) a 30-foot-wide, 40-foot-long, and 20-foot-high metal powerhouse, containing two 400-kilowatt generators; (4) a 2-mile-long 12.5 kV transmission line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–343 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

January 4, 1999.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of Recreation Plan (Exhibit R) and Project Boundary (Exhibit G).

b. *Project No.:* 199–133.

c. *Date Filed:* January 4, 1999.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper.

f. *Location:* The proposed amendment would affect land on Lake Marion in Orangeburg County, SC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* G. Denton Lindsay, Jr., Property Management, South Carolina Public Service, Authority, P.O. Box 2946101, Moncks Corner, SC 29461–2901, (803) 761–4068.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Comment date:* February 3, 1999.

k. *Description of the Application:* South Carolina Public Service Authority (licensee) requests Commission authorization to amend its Recreation Plan and Project boundary (exhibits R and G) to reclassify an 8.6-acre parcel from Residential Marginal to Residential. The licensee also requests authorization to sell the 8.6 acres along with a 2.0-acre Future Residential parcel to the high water contour. The licensee would reserve a 30-foot control easement above the high water contour and require a 75-foot building setback requirement.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to a intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–345 Filed 1–7–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5498–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 21, 1998 Through December 25, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–DOE–E09802–00 Rating EC2, Commercial Light Water Reactor for the Production of Tritium at one or more Facilities:

Watts Bar 1. Spring City, TN; Sequoyah 1 and 2 Soddy Daisy, TN; Bellefonte Units 1 and 2, Hollywood, AL, Approval of Permits and Licenses, TN and AL.

Summary: EPA had environmental concerns about the project; and requested more information about the comparative costs of the Tritium production alternatives, processes, and potential environmental impacts.

ERP No. D–SFW–K65115–CA Rating EO2, Headwaters Forest Acquisition and the Palco Sustained Yield Plan and Habitat Conservation Plan, Implementation, Humboldt, Del Norte and Mendocino Counties, CA.

Summary: EPA expressed environmental objections and has identified key issues which need to be better addressed to fashion a more environmentally beneficial package. EPA key issues primarily focus on improvements EPA would like to see in the aquatics section of the HCP: cumulative watershed effects analysis process, Mass Wasting Strategy, wider riparian buffer zones consistent with recent State legislation, road storm-proofing program and wet weather road use, herbicide/forest chemical use, implementation, compliance, and monitoring.

ERP No. D–USA–K11092–AZ Rating EC2, Yuma Proving Ground Multipurpose Installation, Diversification of Mission and Changes to Land Use, NPDES General Permit and COE Section 404 Permit, Yuma and La Pas Counties, AZ.

Summary: EPA expressed environmental concerns due to the lack of detailed analyses pertaining to actions associated with implementing the preferred alternative.

ERP No. D–USA–K26001–HI Rating LO, Schofield Barracks Wastewater Treatment Plant (WWTP), Effluent Treatment and Disposal, NPDES Permit and COE Section 404 Permit, City of County of Honolulu, Oahu, HI.

Summary: EPA expressed a lack of objection to the proposed project.

ERP No. D–USN–K11094–00 Rating EC2, Developing Home Port Facilities For Three NIMITZ–Class Aircraft Carriers in Support of the U.S. Pacific Fleet, Construction and Operation, Coronado, CA; Bremerton and Everett, WA, Pearl Harbor, HI.

Summary: EPA expressed environmental concerns at the three alternative sites in California and Washington State that were identified as part of the Proposed Action regarding dredging and dredged material disposal; impacts to marine water quality and aquatic biological resources; air quality; pollution prevention; and cumulative impacts. EPA noted that are dredging and dredged material disposal issues that need to be examined by EPA should the Navy decide to homeport a Nimitz-class carrier at Pearl Harbor, Hawaii.

ERP No. DS–NOA–K90020–CA Rating EC2, Coastal Pelagic Species Fishery Management Plan Amendment 8, (Formerly Known as Northern Anchovy Fishery Management Plan), Approval and Implementation, WA, CA and OR.

Summary: EPA expressed environmental concern with potential impacts to endangered marine mammals and birds, the minimal development of stock recovery plans (rebuilding program, pg B–81), and scarcity of firm data upon which to base management decisions. Additional information and clarification were requested regarding EPA above concerns.

ERP No. DS–UMC–K24018–CA Rating EO2, Sewage Effluent Compliance Project, Updated and Additional Information, Implementation, Lower Santa Margarita Basin, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA expressed environmental objections to the proposed project based on potential adverse impacts to waters of the United States, and special aquatic sites. EPA requested additional data and assurances of mitigation, to avoid potential degradation of a riparian habitat mitigation area and a coastal salt marsh, from disposal of sewage effluent.

Final EISs

ERP No. F–DOE–J22005–CO Rocky Flats Environmental Technology Site Management of Certain Plutonium Residues and Srub Alloy Stored, Golden, CO.

Summary: EPA had no comments on the final document.

ERP No. F–FAA–E51045–FL Miami International Airport Master Plan Update for the Proposed New Runway, Funding and COE Section 404 Permit, Miami-Dade County, FL.

Summary: EPA expressed environmental concerns about a number of noise related issues raised in the DEIS were not adequately addressed in the FEIS. Concern was also expressed that, in spite of significant noise to residents near the airport, adequate mitigation is lacking.

ERP No. F–NOA–L90027–AK Kachemak Bay National Estuarine Research Reserve (KBNERR) Management Plan, Operations and Development, Southcentral, AK.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USN–E11039–FL Cecil Field Naval Air Station Disposal and Reuse, Implementation, City of Jacksonville, Duval and Clay Counties, FL.

Summary: EPA had a lack of objection to the proposed project.

Dated: January 5, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–430 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5498–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed December 28, 1998 Through December 31, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980523, FINAL EIS, AFS, CA, Sequoia National Forest Trail System Plan, Emplementation, Amendment to the Sequoia National Forest Land and Resource Management Plan, Fresno, Kern and Tulare Counties, CA, Due: February 01, 1999, Contact: Jim Whitfield (209) 784–1500.

EIS No. 980524, DRAFT EIS, AFS, CO, South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Routt County, CO, Due: February 22, 1999, Contact: Andy Cadenhead (970) 870–2220.

EIS No. 980525, FINAL EIS, BLM, WY, Carbon Basin Coal Project Area, Coal Lease Application for Elk Mountain/Saddleback Hills, Carbon County, WY, Due: February 01, 1999, Contact: Jon Johnson (307) 775–6116.

EIS No. 980526, FINAL EIS, FHW, DC, Canal Road Entrance to the Georgetown University Improvements, Reconstruction between Whitehurst Freeway and Foxhall Road, Washington, DC, Due: February 01, 1999, Contact: Edward Sheldal (202 523–0163.

Amended Notices

EIS No. 980487, FINAL EIS, FHW, WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Inssuance, Sauk and Dane Counties, WI, Due: February 03, 1999, Contact: Richard Madrzak (608) 829–7510.

Published FR 12–04–98—Review Board extended.

Dated: January 5, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–431 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34163; FRL–6055–9]

Increasing Transparency For the Tolerance Reassessment Process; Availability of Preliminary Risk Assessments for Five Organophosphates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the Environmental Protection Agency's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health and ecological risk assessments and related documents for acephate, disulfoton, methamidophos, oxydemethon methyl, and pirimiphos methyl. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the five organophosphates that have risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these five pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Written comments on these assessments must be submitted on or before March 9, 1999.

ADDRESSES: By mail, submit written comments in triplicate to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket without prior notice.

To request a copy of any of the preliminary risk assessments and related documents listed in this notice, contact or visit the OPP Pesticide Docket at the addresses given in this unit, or call (703) 305–5805. The Docket staff will inform callers as to which of the documents can be sent directly from the docket and which need to be requested from the Freedom of Information Act Office due to their bulk. The public docket is available for public inspection in Rm. 119 at the Virginia address given in this unit from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No CBI

should be submitted through e-mail. Copies of the preliminary risk assessments for the five organophosphate pesticides may also be accessed at: http: www.epa.gov/oppsrrd1/op.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA as amended by the FQPA. The Agency's preliminary human health and ecological effects risk assessments for the following five organophosphate pesticides are available in the individual pesticide dockets: acephate, disulfoton, methamidophos, oxydemethon methyl, and pirimiphos methyl.

Included in the individual pesticide dockets are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the five organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these five pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

To provide users with the most recent information on the five organophosphates, EPA has also included in each docket the Agency's July 7, 1998, ''Hazard Assessment of the Organophosphates'' and the Agency's July 9, 1998, ''FQPA Safety Factor Recommendations for the Organophosphates.'' In general, these two documents were completed at a different time than the five individual pesticide preliminary risk assessments discussed in this notice. The Agency notes that where the preliminary risk assessments are inconsistent with the Hazard Assessment and FQPA Assessment, these Assessments will supersede the relevant portions of the preliminary risk assessments and will be incorporated into the revised individual pesticide risk assessments. The Agency also notes that these documents reflect only the work and analysis conducted as of the time they were produced, and as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by March 9, 1999 at the address given under ''ADDRESSES.'' Comments will become part of the Agency record for each individual pesticide to which they pertain.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under the following docket control numbers. When submitting written or electronic comments regarding the five organophosphates, use the following docket control numbers:

Chemical	OPP Docket no.
Acephate	OPP–34164
Disulfoton	OPP–34165
Methamidophos	OPP–34166
Oxydemethon methyl	OPP–34167
Pirimiphos methyl	OPP–34168

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number OPP–34163. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: January 4, 1999.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–428 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6217–4]

Proposed CERCLA Amended Administrative De Minimis Settlement; American Chemical Services Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(g)(4), notice is hereby given of a

proposed amended administrative de minimis settlement for recovery of past and projected future response costs concerning the American Chemical Service Site in Griffith, Indiana with the following settling parties: Interconex, Inc., Milprint Inc., La-Z-Boy on behalf of Rose Johnson AKA Rose, I.K.I Manufacturing Co. Inc., American Tara Corporation, Beech & Rich, Inc., Bodine Electric Co. and Carl Gore Printing Co. The settlement requires the settling parties to pay a total of $33,593.43 to the ACS Special Account within the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9607(a) and section 7003 of the Resources Conservation and Recovery Act (RCRA) 42 U.S.C. 6973. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. Comments may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

ADDRESSES: The proposed settlement is available for public inspection at 77 W. Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Nicole Cantello, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the American Chemical Service Site, Griffith, Indiana and EPA Docket No. V–W–94–C–255 and should be addressed to Nicole Cantello, U.S. Environmental Protection Agency, Mail Code C–14J.

FOR FURTHER INFORMATION CONTACT: Nicole Cantello, U.S. Environmental Protection Agency, Mail Code C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Dated: December 23, 1998.

Wendy L. Canney,

Acting Director, SuperFund Division, Region 5.

[FR Doc. 99–427 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

December 24, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0062.

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form Number: FCC 330.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; State, Local, or Tribal Government.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 500 hours.

Total Annual Costs: $675,000.

Needs and Uses: FCC Form 330 is used to apply for authority to construct a new or make changes in an Instructional Television Fixed or response station and low power relay station, or for consent to license assignment or transfer of control.

The Commission has revised the FCC Form 330 to facilitate electronic application processing by replacing narrative exhibits with a series of ''yes/no'' questions.

The data are used by FCC staff to determine if the applicant meets basic statutory requirements and is qualified to become a licensee of the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–410 Filed 1–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–98–21–E (Auction No. 21); DA 98–2582]

Location and Monitoring Service Auction; Waiver of Electronic Filing Requirement

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission will hold an auction for 528 multilateration Location and Monitoring Service licenses to operate in the 902–928 MHz band. This Public Notice announces that the Wireless Telecommunications Bureau waives the electronic filing requirement for Location and Monitoring Service short-form (FCC Form 175) applications.

DATES: The Location and Monitoring Service auction will begin on February 23, 1999. The deadline for filing short-form (FCC Form 175) applications is January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Garland or Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released on December 23, 1998. The complete text of this Public Notice is available for

inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. In addition, copies of the Public Notice may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/ auctions.

Synopsis of the Public Notice

A. Introduction

1. By public notice dated November 10, 1998, the Wireless Telecommunications Bureau (''*Bureau*'') postponed the commencement of the multilateration Location and Monitoring Service (''LMS'') auction to February 23, 1999. *See* ''Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licenses; Commencement of the Auction Postponed to February 23, 1999,'' *Public Notice*, 63 FR 63,730 (November 16, 1998) (''*LMS Postponement Public Notice*''). Thus, the short-form (FCC Form 175) application deadline was postponed from November 16, 1998 to January 25, 1999. As a result of this postponement, applicants are now required to file applications electronically. Beginning January 1, 1999, all short-and long-form applications must be electronically filed. 47 CFR 1.2105(a) and 1.2107(c).

2. In order to avoid any uncertainty regarding filing requirements that may result from this postponement, the Bureau hereby waives the electronic filing requirement for LMS short-form applications and will accept manually-filed applications. Nevertheless, the Bureau *strongly encourages* potential applicants to utilize electronic filing for the filing of their short-form applications. The electronic filing of short-form applications is in the best interest of auction participants, as well as members of the public monitoring Commission auctions. The electronic filing requirement for long-form applications remains in force.

3. The window for filing the FCC Form 175 is now open and will remain open until 5:30 p.m. ET on January 25, 1999. Previously filed electronic applications will remain intact.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–421 Filed 1–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 71928.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 P.M.—January 13, 1999.

CHANGE IN THE MEETING: Addition to the CLOSED portion of the meeting. Item 3—Fact Finding Investigation No. 23—Ocean Common Carrier Practices in the Transpacific Trades—Submission of Report.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–554 Filed 1–6–99; 3:37 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency information collection activities: Discontinuance

SUMMARY. *Background.* Notice is hereby given of the discontinuance of an information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Discontinuation of the following report:

1. Report title: Advance Report of Deposits

Agency form number: FR 2001

OMB Control number: 7100-0087

Effective Date: Monday, January 11, 1999

Frequency: weekly

Reporters: depository institutions

Annual reporting hours: 26,957

Estimated average hours per response: 0.96

Number of respondents: 540

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects advance information on selected items on the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100-0087) from a sample of FR 2900 respondents on a weekly basis. These data were essential in constructing estimates of aggregate required reserves and vault cash for the reserve maintenance period. Since the Federal Reserve's change to lagged reserve requirements earlier this year, these data are no longer essential. On Monday, January 11, 1999, current respondents will submit their final FR 2001 report, with totals for the six-day period ending Sunday, January 10, 1999.

Board of Governors of the Federal Reserve System, January 4, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–389 Filed 1–7–99; 8:45AM]

Billing Code 6210–01–F

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.

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 January 22, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. South Plains Financial, Inc., Lubbock, Texas, and South Plains Delaware Financial Corporation, Dover, Delaware; to engage *de novo* through their subsidiary, ARC Check Cashing, Inc., Lubbock, Texas, in check cashing services, *see Board Orders 84 Fed. Reg. Bull. 481 (1998) and 76 Fed. Reg. Bull. 860 (1990)*; in wire transmission services, *see Board Orders 81 Fed. Reg. Bull. 974 (1995) and 81 Fed. Reg. Bull. 1130 (1995)*; in bill payment services, *see Board Order 84 Fed. Reg. Bull. 481 (1998); in issuing and selling consumer payment instruments, pursuant to § 225.28(b)(13) of Regulation Y and Board Order 84 Fed. Reg. Bull. 481 (1998); in credit and credit related activities, pursuant to § 225.28(b)(1) of Regulation Y; in government services distribution, see Board Order 84 Fed. Reg. Bull. 481 (1998) and Board Order 71 Fed. Reg. Bull. 168 (1985)* and § 225.28(b)(6) of Regulation Y; and in incidental activities, *see Board Order 84 Fed. Reg. Bull. 481 (1998).*

Board of Governors of the Federal Reserve System, January 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–336 Filed 1–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–484 Filed 1–6–99; 10:36 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), the Federal Trade Commission (FTC) is inviting comments on proposed three year extensions of Paperwork Reduction Act clearance for information collection requirements associated with five Commission rules. The FTC is also inviting comments on the extension of clearance for collections of information associated with FTC administrative or procedural tasks.

This request is solely for extensions of current collections of information; no amendments or changes to these rules or the collection requirements contained therein are being proposed by this notice. Any adjustments to burden hours are due solely to changes in the market-place or the practices of the industries involved.

DATES: Comments must be filed by (60 days from the date of this publication).

ADDRESSES: All comments should be identified as responding to this notice and should be sent to Elaine W. Crockett, Attorney, Office of the General Counsel, Room, 598, 600 Pennsylvania Avenue, NW., 20580. Telephone: (202) 326–2453. Fax: (202) 326–2477. E-mail: ecrockett@ftc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed extensions of the information requirements should be addressed to Elaine W. Crockett at the address listed above.

SUPPLEMENTARY INFORMATION: As required by 5 CFR 1320.8(d)(1), the FTC is seeking comments concerning the proposed extensions in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) Evaluate the accuracy of the FTC's estimates of the burdens associated with each proposed collection of information, including the validity of the methodologies and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collections 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.

1. Title: FTC Hart-Scott-Rodino ("Premerger Notification") Rules and Form, 16 CFR Parts 801–803—(OMB Control Number 3084–0005)—Extension

The Antitrust Improvements Act Notification and Report Form (''Report Form'' or ''Form'') implements the notification requirement contained in the Premerger Notification Rules, 16 CFR parts 801–803 (1998) and section 7A of the Clayton Act, 15 U.S.C. 18a. Under the Act and its associated rules, certain parties contemplating acquisitions of a specified size must notify the FTC and the Antitrust Division of the Department of Justice (''the enforcement agencies'') and wait for 30 days (or, in the case of a cash tender offer, 15 days) before consummating the transaction. The FTC has established the Report Form as the means for accomplishing the notification mandated by the Act. The Report Form provides the enforcement agencies with the information needed to make prompt, preliminary determinations of the antitrust implications of the reported transactions.

On June 14, 1994, the FTC published a **Federal Register** Notice in which it proposed certain changes to the Report Form. 59 FR 30545. At that time, the FTC requested comments on any paperwork burdens imposed by those changes. *Id.* at 30588. Based on comments received in response to the Notice, as well as other input from interested parties, the enforcement agencies are continuing their review of the Report Form. Any future proposal to change the Form as a result of this review will include a request for comments on any paperwork burdens imposed by the proposal.

This request is for an extension of the Rules and the Form as they currently exist. This notice proposes no amendments or changes to the Rules of the Form, nor does it address any of the changes proposed in 1994. The purpose of this notice is simply to comply with those PRA requirements that will allow the Report Form to be used in its current format pending any amendments to the Rules or Form.

Estimated Annual Burden Hours: The total estimated burden associated with completing and filing the Form is 260,443 hours (based on fiscal year 1997 figures). We have estimated that, depending on a number of different factors, it takes anywhere from 8 to 160 hours to complete and file the Form.[1] The average, based on historical experience, is approximately 39 hours. In certain circumstances, only an index or copies of filings made with another regulatory agency are required to be submitted to the FTC in lieu of the Form (''index filing''). We have estimated that 2 hours is needed to comply with the filing requirement in these instances. The enforcement agencies received notice of 3622 transactions in 1997, of which 59 were reported to other regulatory agencies. Thus the total 1997 burden was (3517 transactions × 39 hours) + (59 transactions × 2 hours), or 260,443 hours. The increase from the 1994 estimated burden of 107,985 hours (when OMB clearance was last sought regarding the Form and regulations) is solely a function of the increase in filings since 1994. Although the number of reported transactions totaled 3,622 in 1997, because of variations in the number of filings required for each transaction, the total number of filings received for these transactions is approximately 6,734.[2]

Estimated Labor Costs: Using the burden hours estimated above, the total cost associated with the Rule and Form would be approximately $78,132,000 (260,443 hours × $300 hour). To verify this cost estimate, staff conducted an informal survey of actual billings by several antitrust practitioners for preparation of the Form.[3] These estimates, based on the type and complexity of each filing[4] closely approximated our estimate, based on burden hours. This information is summarized below. Only the first category, the index filing, has been determined on an hourly fee basis. The remaining figures are calculated on the following basis: 6734 filings minus 59 index filings=6675.

Index filing: 59×$600 (2 hours @ $300/hr)=$35,400
Simple filings ([35%×6675] × $2000)=4,672,000
Moderately complex filings ([60%×6675] × $15,000) = 60,075,000
Very complex filings ([5%×6675]×$50,000) = 16,700,000
Total: $81,482,400

This estimate is comparable to, although slightly higher than, our estimate of $78,132,000. We conservatively have adopted the $81,482,400 estimate as the total annual labor cost.

Estimated Capital or Other Non-Labor Costs: The rule imposes no current start-up costs and minimal capital costs. The Rule first took effect in 1979, so law firms and companies already have incurred any necessary start-up costs associated with filing the Form. Moreover, law firms already have access, for other business purposes, to the ordinary office equipment needed for compliance, and the Rule has no consequential effect on the cost of operating and maintaining that equipment.

2. Title—Negative Option Plans by Sellers in Commerce (''Negative Option Rule'') 16 CFR Part 425—(OMB Control Number 3084–0104)—Extension

The Negative Option Rule protects consumers who participate in negative option plans (*e.g.*, record or book ''clubs''), contractual arrangements whereby a seller periodically ships merchandise to subscribers without an affirmative order by the subscriber. The Rule requires sellers to send an advance notice to subscribers describing merchandise offered for sale. The subscriber may instruct the seller, in accordance with the terms of the plan, to refrain from shipping the merchandise. The Rule also requires that promotional materials disclose the terms of membership clearly and conspicuously, and establish procedures for the administration of such ''negative option'' plans.

Estimated Annual Burden Hours: The Rule's estimated annual burden is approximately 14,375 hours per year. We estimate that approximately 175 existing clubs spend about 75 hours each to comply with the Rule's disclosure requirements, for a total of 13,125 per year (175 clubs × 75 hours).

We have revised the number of hours from 125 to 75 hours per year for each existing club to comply with the information collection requirements contained in the Rule. These clubs should be familiar with the Rule, which has been in effect since 1974, so their ''burden'' of compliance has diminished over the years. Also, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would now make these disclosures absent any regulatory requirement because the Rule has assisted in fostering long-term relationships with consumers.

In addition, approximately 10 new clubs come into existence each year. These clubs spend about 125 hours complying with the Rule, making the total hours that new clubs spend per year 1,250 (10 new clubs × 125 hours). For new clubs, we have retained the estimate of approximately 125 hours to comply with the rule (including start-up time). The total of 14,375 hours per year for both existing and new clubs is a reduction from 15,500 burden hours that the FTC estimated in 1995.

Estimated Labor Costs: Total labor costs are approximately $367,697 per

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[1] These factors include the extent of the filing person's United States operations; the number of different industries in which the filing person is engaged; the firm's prior experience and familiarity with the premerger notification program; the existence of horizontal overlaps or vertical relationships in the businesses in which the parties to the transaction derive revenue; and the organizational structure and recordkeeping system of the reporting entities.

[2] For example, of the 3622 transactions reported, 164 were joint ventures, (c)(6) transactions or (c)(8) transactions; only one filing is required for each transaction. Of the remaining 3458, approximately 80 percent, or 2766, require two filings per transaction: one each from the acquiring person and the acquired person. The other 20 percent (692) represent certain transactions for which the consideration given is voting stock. A typical example of these transactions is the acquisition of company B's voting stock by company A. As payment for the B stock, A will give the B sharholders certain shares of company A stock. A shareholder of B will acquire an amount of company A stock that will require the B shareholder to submit a separate filing as an acquiring person. For HSR purposes, the company A/company B filings make up one transaction, and the B shareholder/company A filings comprise a second transaction. However, company A generally needs to submit only one filing for the two transactions. Therefore the two transactions require three filings, computed as 1.5 filings per transaction (The 1.5 figure is a slight overestimation, since in some cases more than one shareholder of company B has a filing obligation as an acquiring person. Each shareholder's notification is trated as a separate transaction, and company A's filing as an acquiring person serves as the acquired party's filing for each of the shareholder transactions. Thus, for example, four transactions—a primary transaction with three related shareholder transactions—may have a total of only five filings.)

[3] The $45,000 Hart-Scott-Rodino filing fee is not included in these cost estimates because the fee does not fall within either of the two cost categories defined by OMB: (1) Total hour burden and annualized costs of hour burden (labor), and (2) non-labor costs, consisting of total capital and start-up costs and total operation and maintenance costs. *See* OMB Instructions for Completing OMB Form 83–I.

[4] The survey was based on number of filings because each side to a transaction is represented by a different law firm. Therefore, practitioners do not have cost information relating to an entire transaction.

year. According to the Bureau of Labor Statistics, the average compensation for advertising managers is $27.88 per hour. Compensation for clerical personnel is approximately $10,00 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform some associated tasks, such as placing advertisements and responding to inquiries about offerings or prices, the total cost to the industry for the Rule's paperwork requirements would be approximately $367,697 (65 hours managerial time × 175 existing negative options plans × $27.88 per hour = $317,135) plus (10 hours clerical time × 175 existing negative options plans × $10.00 per hour = $17,500) plus (115 hours managerial time × 10 new negative options plans × $27.88 per hour = $32,062) plus (10 hours clerical time × 10 new negative options plans × $10.00 per hour = $1,000).

Estimated Capital or Other Non-Labor Costs: Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the capital and start-up costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis.* Negative option clubs already have access to the ordinary office equipment necessary for compliance with the Rule.

Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution costs are incurred anyway to market the product, inserting the required disclosures constitutes only a *de minimis* incremental expense.

3. Title: Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR Part 432—(OMB Control Number 3084–0105)—Extension

The Amplifier Rule assists consumers by requiring disclosure of four performance characteristics whenever representations are made concerning power output, power band or power frequency, and distortion characteristics of home audio equipment. The Rule also specifies the test conditions to be used to obtain the FTC disclosures.

Estimated Burden Hours: The annual burden is approximately 1,500 hours. The Rule's provisions require affected entities to test the power output of amplifiers in accordance with specified FTC protocol. Approximately 300 new amplifiers and receivers come on the market each year. Since high fidelity manufacturers routinely conduct performance tests as part of any new product development, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up (''precondition'') period that the Rule requires before measurements are taken may add approximately one hour to the testing entails. Thus, we estimate that the Rule imposes approximately 300 hours (1 hour × 300 mew products) of added testing burden annually.

The Rule requires disclosures if an advertisement makes a power output claim. Assuming that ten advertisements per magazine are placed each month in ten existing magazines carrying audio equipment advertisements, we estimate that approximately 1,200 magazine advertisements annually would be required to carry the FTC disclosures. The cost of these disclosures is limited to the time needed to draft and review the language pertaining to power output specifications.

Because this Rule became effective in 1974, and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, we estimate the time involved for this task to be a maximum of 1 hour per advertisement, for a total burden of 1,200 hours. The total annual burden imposed by the Rule is therefore approximately 1,500 burden hours. (300 testing hours + 1,200 disclosure hours). This is a reduction from 2,700 burden hours estimated in 1995.

Estimated Labor Costs: According to staff at the Bureau of Labor Statistics, the average hourly compensation for electronics engineers in the industry is $28.73, and the average hourly compensation for marketing, advertising and public relations managers is $27.88. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $28.73 = $8,619.00), and marketing, advertising or public relations managers prepare advertisements (including required disclosures) (1,200 hours × $27.88 = $33,456.00). Based on this information, we estimate the cost to the industry for the Rule's paperwork requirements to be $42,075.00 per year ($33,456.00 + $8,619.00).

Estimated Capital or Other Non-Labor Costs: The Rule imposes no capital or other non-labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

4. Title: Disclosure Requirements and Prohibition Concerning Franchising and Business Opportunity Ventures (''Franchise Rule''), 16 CFR Part 436—(OMB Control Number 3084–0107)—Extension

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, and the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee (''earnings claims''). Franchisors must also preserve the information that forms a reasonable basis for such claims. The Rule is designed to help potential investors protect themselves from fraudulent claims.

Estimated Annual Burden Hours: The estimated annual burden imposed by the Rule is 33,500 hours. Based upon our review of trade publications and information from state regulatory authorities, we estimate there are approximately 5,000 American franchise systems, consisting of 3,500 business format franchises and 1,500 business opportunity sellers.

Approximately 10% of all franchisors, or 500 franchisers, sell exclusively in states that do not impose franchise disclosure requirements comparable to those of the Rule. These firms are subject to compliance burdens imposed solely by the Commission's Rule. These firms may spend anywhere from 3–100 hours to comply with the Rule's disclosure requirements, which require, among other things, the disclosure of information about the business experience of the franchisor and the franchisor's directors and key executives; the litigation history of the franchisor and its directors and key executives; and the money required to be paid by the franchisee to obtain or start the franchise. We estimate the Rule compliance requires an average of 30 hours annually for each of these 500 franchisors, resulting in a total burden of approximately 15,000 hours.

On the other hand, a number of states impose requirements similar to those of the Rule. In these instances, the Commission's Rule creates little additional regulatory burden on most major franchisors. The Rule requires that such firms need only provide an ''FTC'' cover sheet that identifies the franchisor, the date the document is issued, a table of contents, and a notice that tracks language specifically provided in the Rule. This additional

compliance burden is *de minimis.* Language supplied by the government for the purpose of disclosure to the public is excluded from the definition of ''collection of information'' under the PRA. 5 CFR 1320.3(c)(2). Nonetheless, we estimate that any additional time imposed by the remaining required disclosures can be handled by clerical staff and would be no more than 3 hours per year, for a total of 13,500 burden hours (4.500 franchisors × 3 hours = 13,500).

The Rule also contains some recordkeeping provisions. Any recordkeeping effort that would be incurred in the ordinary course of business does not constitute ''burden'' under the PRA. 5 CFR 1320.3(b)(2). This would usually be the case; however, there may be some recordkeeping effort that is incurred solely because of the Rule. We estimate that firms would spend no more than 1 hour per year on any additional compliance burden, for a recordkeeping burden of 5,000 hours. The total burden for the Rule, therefore, is 33,500 hours.

Estimated Annual Labor Costs: The estimated annual labor cost is approximately $3,935,000, consisting of $3,885,000 for disclosure requirements ($250 per hour attorney time × 15,000 hours); $135,000 for the FTC cover sheet (13,500 hours per year × $10.00 per hour clerical time); and $50,000 for recordkeeping costs (5,000 hours per year × $10.00 per hour clerical time).

Estimated Capital and Other Non-Labor Costs: The estimated capital and other non-labor costs are approximately $1,500,000, consisting entirely of printing costs ($25.00 per document × 100 copies × 500 franchisors = $1,250,000) + ($.50 per FTC cover sheet × 100 copies × 4,500 firms=$250,000). Besides these costs, compliance with the Rule imposes few or no additional non-labor cost burdens beyond what franchisors ordinarily spend in the course of operating their business (such as purchasing computer equipment) or to comply with state disclosure laws (such as the costs to prepare audited financial statements).

In 1995, the agency requested a burden estimate of 36,000 burden hours. We have revised that figure to 33,500 hours because a review of the 1995 submission revealed that some hours were inadvertently assigned to burden solely attributable to state requirements.

5. Title: Labeling and Advertising of Home Insulation (''R-Value Rule''), 16 CFR Part 460—(OMB Control Number 3084–0109)—Extension

The R-Value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation product signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated Annual Burden Hours: The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements and other promotional materials. These requirements apply to certain manufacturers and their testing laboratories; home insulation installers; new home sellers who make energy savings claims; and retailers who sell home insulation for do-it-yourself installation by consumers.

Based on information provided by members of the insulation industry, staff estimate that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,500 installers who sell home insulation; (3) 130,000 new home builders/sellers of site-built home and approximately 7,000 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Manufacturers and Testing Laboratories: Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

As for third-party disclosure requirements in advertising and other promotional materials, staff estimate that most manufacturers spend an average of approximately 20 hours per year to comply with this requirement. Only the five or six largest manufacturers require additional time (approximately 80 hours each). Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours (144 manufacturers × 20 hours + 6 manufacturers × 80 hours).

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep these records of testing in the ordinary course of business. Staff estimate that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers: Installers are required to show the manufacturers' insulation fact sheet to retail consumers prior to purchase. Installers must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to be installed. Staff estimate that two minutes per sales transaction is sufficient for complying with these requirements. Approximately 835,000 retrofit insulations are installed by approximately 1,500 installers per year, and therefore, the annual burden is approximately 27,833 hours (835,000 sales transactions × 2 minutes). Staff also estimate that one hour per hour year per installer is sufficient for including required disclosures in advertisements and other promotional materials. The burden for their requirement is approximately 1,500 hours per year (1,500 installers × 1 hour).

Also, installers must keep records that indicate substantiation relied upon for savings claims. The addition time for complying with this requirement is minimal, approximately 5 minutes per year per installer, for a total of approximately 125 hours (1,500 installers × 5 minutes).

New Home Sellers: New home sellers must make contract disclosures concerning the type, thickness and R-value of the insulation they install in each part of a new home. Staff estimate that no more than one minute per sales transaction is required to comply with this requirement, for a total annual burden of approximately 283,333 hours (1.7 million new home sales × 1 minute).

New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records anyway in the ordinary course of business, staff estimate that one minute burden for disclosures would be more than adequate to cover this recordkeeping requirement, as well.

Retailers: The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers prior to purchase. This can be accomplished by *i.e.*, placing copies in a display rack, or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets takes approximately one hour per year per retailer, for a burden estimate of approximately 25,000 annual hours (25,000 retailers × 1 hour).

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is extremely small because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer is sufficient for compliance with this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis.* The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule impose a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 125 recordkeeping and 29,333 disclosure hours for installers; 283,333 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. This figure has been rounded to 366,400 burden hours.

Estimated Annual Labor Costs: The total annual labor costs for the Rule's information collection requirements is $7,290,030, derived as follows: $600 for testing, based on 30 hours for manufacturers (30 hours × $20 per hour for skilled technical personnel); $2,750 for complying with the recordkeeping requirements of the Rule, based on 275 (275 hours × $10 per hour for clerical personnel); $33,360 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $10 per hour for clerical personnel); and $7,253,350 for compliance by installers, new home sellers, and retailers with third-party disclosure requirements, based on 362,666 hours (362,666 hours × $20 per hour for sales persons).

Estimate of Capital and Other Non-Labor Costs: There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

6. Title: FTC Administrative Activities (OMB Control Number 3084–0047)—Extension

Currently, the FTC has OMB clearance for certain administrative and/or procedural activities relating to: (1) FTC procurement activities; (2) the document order form used by the FTC public reference branch; (3) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily Parts I, II, and IV); and (4) rules governing claims against the FTC under the Equal Access to Justice Act.

The FTC seeks to delete items (1), (2), and (4). With respect to item (1), OMB has advised the FTC that it must seek clearance only for any agency-unique information collections that have been published as a supplement to the Federal Acquisition Regulations. The FTC has no such supplement and accordingly, there is no requirements to obtain OMB approval. Deleting this item eliminates 1,000 of 2,300 hours estimated in the FTC's 1995 submission for OMB Control No. 3084–0047.

With respect to item (2), FTC Form 14 is excluded from the PRA's definition of ''information'' because the form asks only for the respondent's name, address, a description of the records and the number of copies requested. *See* 5 CFR 1320.3(h)(1) (the definition of ''information'' excludes an ''affidavit'' or ''certification'' that asks the respondent for identifying information such as his or her name, address, the date, and the nature of the instrument); OMB Implementing Guidance to the Paperwork Reduction Act of 1995 (Preliminary Draft), February 3, 1997 (certain other information, such as quantity, quality, or location, may also be excluded). Deleting this item eliminates another 1,000 or 2,300 hours.

With respect to item (4), the ''law enforcement'' exception of the PRA excludes this category, because it involves collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceeding designed to determine fines or other penalties. *See* 5 CFR 1320.4(a)(1)–(3). Deleting this item eliminates another 200 hours of the 2,300 hours previously estimated for this submission.

With respect to item (3), the FTC is requesting an extension for those provisions covered by that category. Several of the Commission's rules contain provisions that allow certain modifications to, or exemptions from, a rule. For example, part 901 of the Commission's rules, 16 CFR part 901, implementing the Fair Debt Collection Practices Act, 15 U.S.C. 1692, sets forth the procedures and standards for approving petitions received from a state that is requesting permission to apply state law in lieu of federal standards.

Estimated Annual Burden Hours: Most applications to the Commission generally fall within the ''law enforcement exception'' discussed above, and those that are not rare and burden associated with them is *de minimis.* For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rules of Practice) are also infrequent and difficult to quantify. An example is a request for a waiver of costs for obtaining Commission records. *See* 16 CFR 4.8(e). Nonetheless, in order to cover any potential ''collections of information'' for which we have not otherwise requested clearance, we are requesting a total of 100 burden hours as an estimate of the time needed to submit any relevant responses.

Estimated Annual Labor Costs: Based on 100 burden hours, and an hourly rate of $250 for attorney time, we estimate the annual cost burden to be no more than $25,000.

Estimated Capital and Start-Up Costs/Operation and Maintenance: Not applicable.

Debra A. Valentine,

General Counsel.

[FR Doc. 99–384 Filed 1–7–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92D–0077]

Compliance Policy Guide, Section 460.200 (CPG 7132.16); Rescinded

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rescission of Compliance Policy Guide (CPG), section 460.200 (formerly CPG 7132.16) entitled ''Manufacture, Distribution, and Promotion of Adulterated, Misbranded, or Unapproved New Drugs for Human Use by State-Licensed Pharmacies.'' CPG 7132.16 no longer reflects current agency enforcement policy consistent with the provisions of section 127 of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

FOR FURTHER INFORMATION CONTACT: Fred Richman, Center for Drug Evaluation and Research (HFD–332), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737, 301-872-7292.

SUPPLEMENTARY INFORMATION: FDA is announcing the rescission of CPG, section 460.200 (formerly CPG 7132.16) entitled ''Manufacture, Distribution, and Promotion of Adulterated, Misbranded, or Unapproved New Drugs for Human Use by State-Licensed Pharmacies.'' CPG 7132.16 no longer reflects current agency enforcement policy consistent with the provisions of section 127 of FDAMA.

FDAMA adds section 503A to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a) to describe circumstances under which compounded drugs are exempt from certain adulteration, misbranding, and new drug requirements of the act. To gain these exemptions, compounded drug products are generally prepared by a licensed pharmacist or licensed physician for individual patients because the products are not available commercially. FDA is developing regulations and guidance on this subject.

Dated: January 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–382 Filed 1–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting for Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The agenda will include a presentation by Dr. Jane E. Henney, Commissioner of Food and Drugs, sharing her priorities for FDA and the relationship between the agency and the health professional community. Other topics on the agenda are the sale of prescription drugs on the internet and direct-to-consumer advertising of prescription drugs.

DATES: The meeting will be held on Monday, February 8, 1999, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, One Metro Center, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630.

Those persons interested in attending this meeting should call Betty Palsgrove at 301–827–6618 to register. Registration also may be transmitted by fax to 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending, the name of the organization, address, and telephone number. There is no registration fee for this meeting, however, early registration is suggested because space is limited. Persons will be registered in the order in which calls are received.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

Dated: January 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–381 Filed 1–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0834]

Draft Guidance for Industry on Non-Contraceptive Estrogen Class Labeling; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until February 13, 1999, the comment period on the draft guidance for industry entitled ''Labeling Guidance for Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling.'' FDA published a notice of availability of the draft guidance in the **Federal Register** of October 15, 1998. FDA is taking this action in response to a request to extend the comment period.

DATES: Written comments may be submitted by February 13, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Lana L. Pauls, Reproductive and Urologic Drug Products, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 15, 1998 (63 FR 55399), FDA announced the availability of a draft guidance for industry entitled ''Labeling Guidance for Non-Contraceptive Estrogen Drug Products—Physician and Patient Labeling.'' The draft guidance is intended to serve as a template for sponsors of estrogen class drug products to ensure that such products contain uniform physician and patient labeling information.

On November 11, 1998, FDA received a letter from Regulatory Affairs, Wyeth-Ayerst Research requesting that the agency extend the comment period on the draft guidance 60 days. The agency has decided to reopen and extend the comment period to February 13, 1999.

Interested persons may, on or before February 13, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments

are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 4, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–379 Filed 1–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–01]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 31, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–187 Filed 1–7–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Notice of Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: January 22, 1999, at 8:30 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include a discussion with the Trustee Council about the Restoration Reserve fund.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–337 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–004811–0

Applicant: SMS Consulting, Tucson, Arizona

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. TE–005180–0

Applicant: Border Wildlife Consultants, Las Cruces, New Mexico

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for bald eagles (*Haliaeetus leucocephalus*), aplomado falcons (*Falco femoralis septentrionalis*), American peregrine falcons (*Falco peregrinus*), Mexican spotted owls (*Strix occidentalis lucida*), and southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. PRT–837751

Applicant: Bureau of Reclamation (BOR), Phoenix Area Office, Phoenix, Arizona

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), and endangered species activities for desert pupfish (*Cyprinodon macularis macularis*), Gila topminnow (*Poeciliopsis occidentalis occidentalis*), Colorado squawfish (*Ptychocheilus lucius*) and razorback sucker (*Xyrauchen texanus*) within lands administered by the BOR.

Permit No. TE–005818–0

Applicant: Diane M. Laush, Tempe, Arizona

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Maricopa, Pinal, Pima, Santa Cruz, Cochise, Graham, Greenlee, Gila, and Yuma Counties, Arizona.

Permit No. TE–006141–0

Applicant: Bruce D. Wilcox, Phoenix, Arizona

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in areas of potential habitat in Arizona.

Permit No. TE–006655–0

Applicant: Logan Simpson Design, Inc., Tempe, Arizona

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), desert tortoise (*Gopherus agassizii*), southwestern willow flycatcher

(*Empidonax traillii extimus*), and the coastal California gnatcher (*Polioptila c. californica*) in Arizona.

Permit No. TE–006156–0

Applicant: Johnson & Haight Environmental Consultants, Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in southern Arizona species habitat.

Permit No. TE–006166–0

Applicant: Tetra Tech, La Jolla, California

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Pima County outside the Tucson urban area, and southwestern willow flycatcher (*Empidonax traillii extimus*) in various rivers in New Mexico and Arizona.

Permit No. TE–006210–0

Applicant: Angelo State University, Department of Biology, San Angelo, Texas

Applicant requests authorization for scientific research and recovery purposes to collect flowers, fruit, and seed of the Chisos Mountain hedgehog cactus (*Echinocereus chisoensis cacataceae*) in Big Bend National Park, Texas. No live plants will be collected.

Permit No. PRT–820022

Applicant: PBS&J (Formerly Gary Galbraith), Austin, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for bald eagle (*Haliaeetus leucocephalus*), red-cockaded woodpecker (*Picoides borealis*), Houston toad (*Bufo houstonensis*), Bee Creek Cave harvestman (*Texella redelli*), Bone Cave harvestman (*Texella reyesi*), Coffin Cave mold beetle (*Batrisodes texanus*), Kretschmarr Cave mold beetle (*Texamaurops redelli*), Tooth Cave ground beetle (*Rhadine persephone*), Tooth Cave pseudoscorpion (*Tartarocreagis texana*), Tooth Cave spider (*Neoleptoneta myopica*) in Texas.

DATES: Written comments on these permit applications must be received on or before February 8, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Renne Lohoefener,

Acting Regional Director, Ecological Services, Region 2 Albuquerque, New Mexico.

[FR Doc. 99–175 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. TE813431

Applicant: Peter Famolaro, Spring Valley, California

The applicant requests a permit amendment to take (harass using taped vocalizations) the least Bell's vireo (*Vireo bellii pusillus*) for scientific research throughout the species range for the purpose of enhancing its survival.

Permit No. TE828382

Applicant: Sharon K. Collinge, Boulder, Colorado

The applicant requests a permit amendment to take (collection of seeds and leaves) of (*Lasthenia conjugens*) for scientific research in Fort Ord, San Francisco Bay National Wildlife Refuge, Monterey and Alameda Counties, California, for the purpose of enhancing its survival.

Permit No. TE837308

Applicant: John K. Knoecny, Escondido, California

The applicant requests a permit amendment to take (presence/absence) surveys the Yuma clapper rail (*Rallus longirostris yumanensis*) and the southwestern arroyo toad (*Bufo macroscaphus*). The applicant also requests that the permit include removal of toads from pit-fall traplines and construction areas, and include research in Imperial and San Luis Obispo Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE797665

Applicant: RECON, San Diego, California

The applicant requests a permit amendment to take (presence/absence survey, trap) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) throughout its range. The applicant also requests the addition of authorized personnel for the purpose of enhancing the species' survival.

Permit No. TE795933

Applicant: Sugnet and Associates, Roseville, California

The applicant requests a permit amendment to take (collect; sacrifice) the San Diego fairy shrimp (*Branchinechinecta sandiegonensis*) in the State of California, for the purpose of enhancing its survival.

Permit No. TE005535

Applicant: Gilbert Goodlett, Ridgecrest, California

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout the species range for the purpose of enhancing its survival.

Permit No. TE810380

Applicant: Foothill Associates, Environmental Consultants, Roseville, California

The applicant requests an amendment to their permit to take (collect; sacrifice) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE003269

Applicant: Robert James, San Diego, California

The applicant requests an amendment to his permit to take (capture; harass) the Pacific pocket mouse (*Perognathus longimembris pacificua*) and the

Stephen's kangaroo rat (*Dipodomys stephensi*) in conjunction with surveys throughout their range in California for the purpose of enhancing their survival.

Permit No. TE006112

Applicant: Gretchen Flohr, Fremont, California

The applicant requests a permit to take (capture) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with surveys and ecological research throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE005878

Applicant: Santa Clara Valley Water District, San Jose, California

The applicant requests a permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with surveys in Santa Clara County, California for the purpose of enhancing its survival.

Permit No. TE006333

Applicant: Oregon State University, Corvallis, Oregon

The applicant requests a permit to take (capture, handle, and release) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River sucker (*Deltistes luxatus*) in conjunction with ecological studies in Klamath Lake, Oregon for the purpose of enhancing their survival. Activities were previously authorized under subpermit MARKDF–7.

DATES: Written comments on these permit applications must be received on or before February 8, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: December 30, 1998.

Cynthia U. Barry,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–368 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–1060–04]

Notice of Public Hearing

AGENCY: Bureau of Land Management, Interior.

Authority: Public Law 92–195 as amended by Public Law 94–579 and CFR Subpart 4740.1(b).

SUMMARY: A public hearing is scheduled at the Bureau of Land Management Office. A formal hearing will be conducted to receive statements from the public concerning the use of helicopters and motor vehicles in wild horse management operations within Wyoming for calendar year 1999.

DATES: February 8, 1999, 3:00 p.m.

ADDRESSES: Bureau of Land Management, 280 Hwy 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Ron Hall, WH&B Program Manager, Rock Springs Field Office, 280 Hwy 191 North, Rock Springs, Wyoming, (307) 352–0208.

The meeting is open to the public and interested persons may make oral statements on the subject. All statements will be recorded.

John S. McKee,

Field Manager.

[FR Doc. 99–1 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–22–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA210–00–4410–01–2410]

Public Land and Resources; Planning, Programming, and Budgeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Notification of resource management planning schedule.

SUMMARY: The Federal Land Policy and Management Act (FLPMA) requires the Bureau of Land Management (BLM) to prepare land use plans to provide management direction for the public lands. Since 1984, the BLM has completed 108 Resource Management Plans (RMP); 56 earlier and smaller Management Framework Plans (MFP) are still in place. These plans are periodically evaluated, and amended or revised to respond to new circumstances or proposals. Some of the MFPs are replaced by new RMPs when the decisions in the MFPs are no longer valid and it is not feasible to update the decisions through the amendment process.

SUPPLEMENTARY INFORMATION: The Planning Regulations at 43 CFR 1610.2(b) require the BLM to annually publish a planning schedule identifying plan amendments and new RMPs in progress or planned over the next three years. Six RMPs are scheduled to be completed in fiscal year 1999: Las Vegas, NV [signed in October 1998]; Dixie, UT; Challis, ID; Southeast Oregon; Newcastle, WY; and the Management Plan for the Grand Staircase-Escalante National Monument, UT. The Owyhee, ID is scheduled for fiscal year 2000.

Two plans will start this year and be completed in fiscal year 2001: the Lakeview (OR) RMP will be done jointly with the Forest Service Management Plans for the Fremont and Winema National Forests. The Snake River (WY) RMP is the smallest ever, just 2,000 acres, covering islands and other isolated lands in Teton County. The 8 new RMPs currently in progress or planned will replace 12 existing MFPs. Since no schedule was published last year, we have included fiscal year 1998 actions, including completing the Roswell, Grass Creek and Green River RMPs.

Fifty-four land use plan amendments are in progress or planned for fiscal year 1999, excluding the Interior Columbia Basin Ecosystem Management Project. This Project which is scheduled for completion in fiscal year 2000 will be used to amend an additional 43 RMPs and MFPs. New Mexico BLM will amend all 10 of its RMPs in fiscal year 1999 to incorporate Statewide Standards and Guides. Eastern States will do three Planning Analyses in fiscal year 1999. For the first time, the Planning Schedule includes formal evaluations of RMPs and MFPs; 16 are scheduled for fiscal year 1999.

The public is invited to comment on the planning schedule. Comments will be considered in refining priorities for the completion of new RMPs and land use plan amendments. Public notice and opportunity for participation are encouraged throughout the planning process, as required by 43 CFR 1610.2(f). The planning process begins with the publication of a Notice of Intent to initiate a new RMP or plan

amendment. Public input is particularly helpful during the scoping process and during the review of draft planning documents.

DATES: Comments on the schedule will be accepted until February 8, 1999.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Attention: Ms. Brenda Williams, 1849 C Street NW (LS–1075), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Williams at (202) 452–7793, or Brenda Williams at (202) 452–5045.

Dated: December 28, 1998.

Henri R. Bisson,

Assistant Director, Renewable Resources and Planning.

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
Arizona:							
Arizona Strip.	Arizona Strip RMP.	Mojave Desert Amendment.	Tortoise habitat, grazing.		PRMP/FEIS	ARMP/ROD	
Kingman ..	Kingman RMP	Hualapai Mountain Land Exchange Amendment.	Changes in land tenure decisions, combined with land exchange proposal.	DRMP/DEIS/ PRMP/FEIS	ARMP/ROD		
	Kingman RMP	Cerbat Mountains Herd Management Area Amendment.	Intermingled private ownership, livestock grazing, wild horse herd area.		ARMP/ROD		
Phoenix ...	Phoenix RMP	EZ Ranch Land Exchange Amendment.	Land tenure decision adjustments.	NOI NOA/DR			
	Phoenix RMP	Empire-Cienega Amendment.	Livestock grazing, recreation, ACECs, wildlife habitat, cultural, rights-of-way.	NOI DRMP/ DEIS	PRMP/FEIS ARMP/ROD		
	Lower Gila South RMP.	Amendment	ACECs, recreation, land tenure, desert tortoise, wild horse and burro, big horn sheep.		PRMP/FEIS ARMP/ROD		
Tucson	Ray Land Exchange/Plan Amendment.	Ray Land Exchange/ Plan Amendment.	Land tenure decision adjustements, combined with land exchange proposal.		DRMP/DEIS PRMP/FEIS ARMP/ROD		
California:							
CDD	California Desert Conservation Area Plan.	West Mojave Desert Amendment.	T&E	DRMP/DEIS	PRMP/FEIS/ ROD		
		Northern & Eastern Mojave Desert Amendment.	T&E	DRMP/DEIS	PRMP/FEIS/ ROD		
		Northern & Eastern Colorado Desert Amendment.	T&E	DRMP/DEIS	PRMP/FEIS/ ROD		
Colorado:							
Craig	Little Snake RMP.	Evaluation	.....		EVAL		
		Amendment	Travel Mgmt			ARMP/RO	
	White River RMP.	Amendment	Oil Shale, land exchange.		ARMP/ROD		
	Kremmling RMP.	Evaluation	.....				
Montrose	Uncompahgre RMP.	Evaluation	.....		EVAL	EVAL	
	San Juan/San Miguel RMP.	Evaluation	.....				EVAL
Grand Junction.	Grand Junction RMP.	Ruby Canyon/Black Ridge Amendment.	Recreation, Travel Mgmt..		ARMP/ROD		
		Unaweep Seep Amendment.	Mineral Withdrawal, ACEC Mgmt..				
		Evaluation	.....				EVAL
	Glenwood Springs RMP.	Oil & Gas Leasing Amendment.	Oil & Gas Leasing, Wildlife, Travel Mgmt.		ARMP/ROD		
		Evaluation	.....			EVAL	
		Naval Oil Shale Amendment.	Wildlife, Travel Mgmt				ARMP/ROD

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
Canon City.	San Luis RMP	Evaluation	.....	EVAL			
		Cochetopa Hills Transportation Amendment.	Travel Mgmt., Recreation, Service First.		ARMP/ROD		
Eastern States:							
	Wisconsin RMP.	Amendment	Disposition of lands ...		NOI DRMP/EA	PRMP/EA ARMP/DR	
	Michigan RMP	Amendment	Minerals management		NOI DRMP/EA	PRMP/EA ARMP/DR	
	State of Louisiana.	Planning Analysis	Land disposal		DRMP/EA PRMP/EA ARMP/DR		
	State of Arkansas.	Planning Analysis	Land disposal and minerals management.		DRMP/EA PRMP/EA ARMP/DR		
	Trumbull County, Ohio.	Mosquito Creek Lake Planning Analysis.	Oil and gas leasing		DRMP/EA PRMP/EA ARMP/DR		
Idaho*:							
Lower Snake River.	Owyhee RMP	New	Grazing, wildlife		PRMP/FEIS	ARMP/ROD	
Challis	Challis RMP ...	New	Realty, grazing, T&E, wild & scenic rivers.		PRMP/FEIS		
		.....	.....		ARMP/ROD		
Shoshone	Bennett Hills/ Timmerman Hills MFP, Sun Valley MFP, Magic MFP, and Monument RMP.	Amendments	Land tenure adjustments.		NOI DMFP/RMP EA PMFP/RMP EA AMFP/RMP	DR	
	Bennett Hills/ Timmerman Hills MFP, Sun Valley MFP, Magic MFP, and Monument RMP.	Amendments	Grazing, riparian upland issues, special management designations.			NOI DMFP/RMP EA PMFP/RMP EA AMFP/RMP DR	
Montana*:							
Butte	Headwaters RMP.	Big Belts Vegetative Treatment/Travel Mgmt. Amendment.	Vegetation, ORV, and wildlife.	NOI	DRMP/DEIS		
		.....	.....		PRMP/FEIS		
		.....	.....		ARMP/ROD		
	Headwaters RMP.	Clancy/Unionville Vegetative Treatment/ Travel Mgmt. Amendment.	Vegetation, ORV, and wildlife.	DRMP/DEIS	DRMP/DEIS PRMP/FEIS ARMP/ROD		
	Headwaters RMP.	Whitetail/Pipestone Vegetative Treatment/Travel Mgmt. Amendment.	Vegetation, ORV, and wildlife.	NOI	DRMP/DEIS PRMP/FEIS ARMP/ROD		
Lewistown, Great Falls, Malta.	Judith-Valley-Phillips RMP.	Disposal JVP/West HiLine Amendment.	Lands	NOI	DRMP/DEIS/ EA/ FONSI/ DR		
Miles City	Billings RMP; Powder River RMP; South Dakota RMP.	ACEC Amendment	Wildlife, vegetation, cultural, and T&E.	DRMP/DEIS/	EA/ FONSI/ DR		
Lewistown, Malta.	Judith-Valley-Phillips RMP.	New Decisions for Oil & Gas Leasing.	Oil & Gas, vegetation and wildlife.	DRMP/Supplemental DEIS	PRMP/Supplemental FEIS ARMP/ROD		

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
Dillon	Dillon MFP	Oil & Gas Amendment	Oil & Gas		NOI		
Nevada*							
Elko	Elko RMP	Evaluation	.....	EVAL			
Winnemucca.	Sonoma-Gerlach MFP.	Amendment	Land tenure	PMFP/EA	AMFP/DR		
	Paradise-Denio MFP.						
	Sonoma-Gerlach MFP.	Amendment	Recreation, VRM, ...	DMFP/	FMFP/		
	Paradise-Denio MFP.		OHV, cultural.	DEIS	FEIS		
	Sonoma-Gerlach MFP.	Amendment	Land disposal	AMFP/DR			
	Paradise-Denio MFP.						
	Sonoma-Gerlach MFP.	Evaluation	.....	EVAL			
	Paradise-Denio MFP.	Evaluation	.....		EVAL		
Carson City.	Lahontan RMP Walker RMP ..	Amendment	Prescribed fire, ... wildland fire ..... management	ARMP/DR			
	Walker RMP ..	Amendment	OHV, recreation	NOI	DRMP/EA PRMP/EA ARMP/DR		
	Lahontan RMP	Amendment	Open space, ... urban interface	NOI	DRMP/EA	PRMP/EA ARMP/DR	
	Lahontan RMP	Amendment	Acquired lands		DRMP/EA PRMP/EA ARMP/DR		
Carson City.	Walker RMP ..	Amendment	Military withdrawal review and termination.		NOI DRMP/EA	PRMP/EA ARMP/DR	
	Lahontan RMP	Evaluation	.....				EVAL
Ely	Caliente MFP	Amendment	Land exchange, conservation easements.		NOI	DRMP/DEIS	PRMP/FEIS
	Caliente MFP	Amendment	Desert Tortoise ..... Recovery Plan	DRMP/DEIS	FRMP/FEIS ARMP/ROD		
	Egan RMP	Evaluation	.....	EVAL			
	Caliente MFP	Evaluation	.....			EVAL	
Las Vegas	Las Vegas RMP.	New	Desert Tortoise, land disposal, mineral withdrawals, OHV Use, utility corridors, ACECs.	PRMP/FEIS	ARMP/ROD		
Battle Mountain.	Tonopah RMP	Amendment	ACECs	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
	Shoshone-Eureka RMP.	Amendment	Prescribed and wildland fire management.	NOI	DRMP/EA PRMP/EA ARMP/DR		
	Shoshone-Eureka RMP.	Evaluation	.....	EVAL			
New Mexico:							
Taos	Taos RMP	Rio Grande Corridor Amendment.	Recreation	PRMP/FEIS	ARMP/ROD		
Albuquerque.	Rio Puerco RMP.	El Malpais Amendment.	NCA Management		DRMP/DEIS		

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
		.....	.....		PRMP/FEIS ARMP/ROD		
Las Cruces.	Caballo (formerly White Sands) RMP.	Amendment	Oil and Gas leasing and development.		NOI DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Statewide	All 8 RMPs as necessary in New Mexico.	Statewide Standards for Public Land Health and Guidelines for Livestock Grazing Management Amendment.	Vegetation, water quality, livestock grazing, fish and wildlife.		DRMP/DEIS PRMP/FEIS ARMP/ROD		
Taos	Taos RMP	Evaluation	.....	EVAL			
Farmington.	Farmington RMP.	Evaluation	.....	EVAL			
Carlsbad	Carlsbad RMP	Evaluation	.....	EVAL			
Socorro ...	Socorro RMP	Evaluation	.....		EVAL		
Las Cruces.	Mimbres RMP	Evaluation	.....		EVAL		
Tulsa	Kansas, Oklahoma, Texas RMP.	Evaluation	.....		EVAL		
Albuquerque.	Rio Puerco RMP.	Evaluation	.....				EVAL
Las Cruces.	Caballo (formerly White Sands) RMP.	Evalution	.....				EVAL
Oregon*:							
Vale/ Burns.	Southeastern Oregon RMP.	New	Eecosystem mgmt., wild and scenic rivers, ACEC, NCA, prescribed fire, special status fish, wildlife and plants.	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Lakeview	Lakeview RMP	New	Ecosystem mgmt., ACEC, migratory big game range, prescribed fire, special status fish, wildlife and plants.		NOI DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Prineville	Brothers/ LaPine RMP.	Criterion/Ten Mile Amendment.	Ecosystem mgmt., ACEC, WSA, prescribed fire, special status fire, wildlife and plants, Tribal values, etc..	NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD	
	Brothers/ LaPine RMP.	Central Oregon, Urban Interface, Amendment.	Ecosystem mgmt., land tenure and R/W, ACEC, prescribed fire.		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Salem	Salem RMP ...	Evaluation	Ecosystem mgmt., special status fish, wildlife and plants, harvest levels, location, etc..		EVAL		
Eugene	Eugene RMP						
Roseburg	Roseburg RMP						
Medford	Medford RMP						
Coos Bay	Coos Bay RMP						
Lakeview	Klamath Falls RMP						
	Upper Klamath Basin/ Wood River Ranch RMP						
Utah*:							
Dixie	Dixie RMP	New	Wild and scenic rivers, desert tortoise, lands, OHV, recreation.	PRMP/FEIS	ARMP ROD		
San Juan	San Juan RMP.	Amendment	Mineral leasing, recreation, wildlife, scenic values.	NOI		DRMP/DEIS	PRMP/FEIS ARMP/ROD

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
Book Cliffs	Book Cliffs RMP.	Amendment	Book Cliffs Wildlife Initiative, mineral development, recreation.		DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Diamond Mountain.	Diamond Mountain RMP.	Amendment	Wildlife, land tenure adjustment.		PRMP/EA	PRMP/DR	
Grand	Grand RMP ...	Amendment (combined with San Juan RMP).	Wildlife, mineral leasing.	NOI		DRMP/DEIS	PRMP/FEIS ARMP/ROD
Kanab/ Escalante.	Grand Staircase Escalante National Monument Management Plan (will replace several MFPs).	New	Objects of scientific interest, water, valid existing rights.	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Wyoming*:							
Kemmerer Pinedale Rock Springs Cody Worland Rawlins Casper	Kemmerer, Pinedale, Green River, Cody, Grass Creek, Washakie, Great Divide and Platte River RMPs.	Amendment to provide management direction for lands returned to BLM from Bureau of Reclamation withdrawals.	Mineral development		NOI PRMP/EA ARMP/DR	Continue amendment process if/as needed	Continue amendment process if/as needed
Pinedale ..	Snake River RMP.	New—Omitted lands never covered by a land use plan.	Land tenure, minerals, recreation, grazing.		NOI	DRMP/DEIS	PRMP/FEIS, ARMP/ROD
Rock Springs.	Green River RMP.	Amendment for oil and gas and potential mineral location withdrawal decisions.	Mineral development, wildlife, recreation conflicts.	NOI	DRMP/DEIS PRMP/FEIS	ARMP/ROD	
Kemmerer	Kemmerer RMP.	Evaluation	.....				EVAL
Worland ..	Grass Creek RMP.	New	Special Mgt. Area designations, Vegetation management, access.	ARMP/ROD			
Worland ..	Washakie RMP.	Potential amendment in conjunction with Red Gulch Dinosaur Track Site Plan.	Mineral development, paleontological, cultural values, recreation, public education, scientific research conflicts.	NOI	DRMP/EA PRMP/EA ARMP/DR		
Newcastle	Newcastle RMP.	New	Access, land tenure, paleontological values, visual resource management.	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Buffalo	Buffalo RMP ..	Evaluation	.....		EVAL		
Rawlins ...	Great Divide RMP.	Shirley Mountain Travel Management Plan Amendment.	ORV designation, wildlife, watershed, recreation.	NOI DRMP/EA PRMP/EA ARMP/DR			
Rawlins ...	Great Divide RMP.	Amendment for coal planning decisions for Carbon Basin Area.	Coal development, wildlife, water quality/quantity.	NOI DRMP/EA PRMP/EA ARMP/DR			
Rawlins ...	Great Divide RMP.	Evaluation	.....		EVAL		
Pinedale ..	Pinedale RMP	Evaluation	.....		EVAL		

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State and district or field office	Plan name and type	New, revision, amendment or evaluation	Major issues	FY–98	FY–99	FY–00	FY–01
*Idaho	24 Land Use Plans.	Plan Amendments, associated with, Interior Columbia, Basin Ecosystem, Management Project.	Ecosystem mgmt., forest and rangeland health, water quality, fish and wildlife.	DRMP/ DMFP/ DEIS	Supplemental DRMP/ DEIS	PRMP/FEIS ARMP/ROD	
Montana	1 Land Use Plan.						
Nevada	3 Land Use Plans.						
Oregon	13 Land Use Plans.						
Wyoming	2 Land Use Plans.						

Key to planning schedule abbreviations:

ACEC—Area of Critical Environmental Concern
AMFP—Approved Management Framework Plan
ARMP—Approved Resource Management Plan
DEIS—Draft Environmental Impact Statement
DR—Decision Record
DRMP—Draft Resource Management Plan
EA—Environmental Assessment
EIS—Environmental Impact Statement
EVAL—Evaluation
FEIS—Final Environmental Impact Statement
FONSI—Findings of No Significant Impact
MFP—Management Framework Plan
NCA—National Conservation Area
NOI—Notice of Intent
OHV—Off-Highway Vehicle
ORV—Off-Road Vehicle
PMFP—Proposed Management Framework Plan
PRMP—Proposed Resource Management Plan
RMP—Resource Management Plan
ROD—Record of Decision
R/W—Right-of-Way
T&E—Threatened and Endangered
VRM Visual Resource Management
WSA—Wilderness Study Area

[FR Doc. 99–426 Filed 1–7–99; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it the Criteria for Evaluating Water Management Plans (Criteria). These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contractors. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by February 8, 1999.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978 5608).

SUPPLEMENTARY INFORMATION: Under provision of section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), ''The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.
2. Inventory water resources available to the District.
3. Best Management Practices (BMP's) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Exemption Process.

Sacramento County Water Agency has developed a water management plan which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

Public comment on Reclamation's preliminary (i.e., draft) determinations is invited at this time. A copy of the plan will be available for review at Reclamation's MP Regional Office

located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: December 31, 1998.

Robert F. Stackhouse,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 99–367 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; TRUST '99 program solicitation.

The proposed information collection is published to obtain comments from the public and affected agencies. The COPS Office, on behalf of the Departments of Justice and Interior Interdepartmental Tribal Justice Working Group, has submitted the following information request utilizing emergency review procedures, to OMB for review and clearance accordance with sections 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS Office has determined that it cannot reasonably comply with the normal clearance procedures under this Part of the Act because normal clearance procedures are reasonably likely to prevent or disrupt the collection of the information.

Therefore, OMB emergency approval has been requested by January 15, 1999. If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20530. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at (202) 395–7285. During the first 60 days of this same review period, a regular review of this information collection is also being undertaken.

Comments are encouraged and will be accepted until the sixtieth day from the date published in the **Federal Register**. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact June Kress, 202–616–2915, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to June Kress, 202–616–2915, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530.

Overview of this information collection:

(1) Type of Information Collection: *New collection.*

(2) Title of the Form/Collection: TRUST '99 Program Solicitation.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Tribal Government. Other: None.

The information collected is used to determine applicant eligibility for the TRUST '99 Grant Program. The program provides funding for federally recognized tribes that currently have law enforcement agencies interested in participation in the COPS Funds to Tribal Communities '99 grant program. Funds to Tribal Communities a grant which could fund salaries and benefits of new police officer, academy/basic training, departmental/field training, supplemental community policing training, computer training, uniforms, and equipment for eligible federally recognized tribal communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 500 respondents at 1.5 hours per response. The information will be collected once from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 750 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 5, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–419 Filed 1–7–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Renewal of Expired Collection; Comment Request

ACTION: Notice of Information Collection under Review; Postgraduate Evaluation of the FBI National Academy Survey Booklet.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 9, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection 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.

Overview of this information collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no assigned form number; Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Officers. This form is used to collect feedback from graduates of the FBI National Academy regarding the relevance of the course offered during training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,553 responses at 45 minutes (0.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,914.75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact James Delaverson 703–640–1138 (or (703) 632–3220 after January 22, 1999), Program Manager, Office of Information and Learning Resources, Research and Analysis Center, FBI Academy, Quantico, Virginia 22135. Additionally, comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. James Delaverson.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, suite 850, Washington Center, 1001 G Street N.W., Washington DC 20530.

Dated: January 4, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–364 Filed 1–7–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Request for Approval of New Collection; Comment Request

ACTION: Notice of Information Collection Under Review; FBI National Academy Training Needs Assessment.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 9, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection 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.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* FBI National Academy Training Needs Assessment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no assigned form number; Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Executives. This form is used to collect respondent perceptions of the training needs of their agency personnel who will be attending the FBI National Academy. This will enable enhancements to the FBI National Academy curriculum to address anticipated training needs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,751 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 860.5 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact James Delaverson, 703–640–1138 (or (703) 632–3220 after January 22, 1999), Program Manager, Office of Information and Learning Resources, Research and Analysis Center, FBI Academy, Quantico, Virginia 22135. Additionally, comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. James Delaverson.

If additional information is required contact: Mr Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, 1001 G Street NW, Washington, DC 20530.

Dated: January 4, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–365 Filed 1–7–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application for Naturalization.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This collection was initially published in the **Federal Register** on 63 FR 55643 on October 16 for public comment. The INS has decided to resubmit this form for an additional 60-day comment period to ensure that the public has further opportunity to review the proposed revisions to the form N–400. Accordingly, comments are encouraged and will be accepted for sixty days until March 9, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection 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.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–400, Application for Naturalization. The Immigration Services Division, Immigration and Naturalization Service

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 926,692 responses at 6 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,5560,152 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 4, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

BILLING CODE 4410–18–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0009
Application for Naturalization

Instructions Application for Naturalization (Form N-400)

What Is This Form?

This form is an application for naturalization. To learn more about naturalization, please read *A Guide to Naturalization*. You can obtain the *Guide* (1) on the INS web site (www.ins.usdoj.gov), (2) by calling the INS Forms Line at 1-800-870-3676, or (3) by going to your local INS office.

Who Should Use This Form?

To use the N-400 you must be ONE of the following:

(1) A Permanent Resident for the past 5 years;

(2) A Permanent Resident married to a U.S. citizen if:
- you have been a Permanent Resident for the past 3 years, **AND**
- you have been married to and living with the same U.S. citizen for the past 3 years, **AND**
- your spouse has been a U.S. citizen for the past 3 years;

(3) A Permanent Resident who has served in the U.S. Armed Forces for 3 years or more, if you:
- are still serving in the U.S. Armed Forces

OR
- will be filing your application within 6 months of honorable discharge from the service.

There are several other small groups of people who are eligible for naturalization and who should use the N-400 (for example, individuals who served in the U.S. Armed Forces during hostilities). Please refer to *A Guide to Naturalization* for more information on these groups.

Who Should NOT Use This Form?

Individuals under 18 years of age should not use this form. Individuals under 18 years of age who seek naturalization based on their parents' or adoptive parents' citizenship should use Form N-600, "Application for Certificate of Citizenship."

What Is The Eligibility Worksheet?

The Eligibility Worksheet is a tool you can use to help you decide if you are eligible to apply for naturalization. Before completing the N-400, you should complete the Eligibility Worksheet. There is an Eligibility Worksheet in the back pocket of *A Guide to Naturalization*.

Does It Cost Anything To Apply for Naturalization?

Yes, it does cost money to apply for naturalization. For the latest fee, please see the one-page insert in the back pocket of *A Guide to Naturalization*. You must send your fee with your application or your application will be returned to you. Your application fee is not refundable even if you withdraw your application or your case is denied. Your fee must be:
- paid by a check or money order drawn on a U.S. bank (do not mail cash);
- in the exact amount; and
- payable to the "Immigration and Naturalization Service."

If you live in Guam and are filing your application in Guam, make your check or money order payable to the "Treasurer, Guam." If you live in the Virgin Islands and are filing your application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

What Do I Send With My Application?

Send the following with your application in this order:

- A photocopy of both sides of your Permanent Resident Card (previously known as Alien Registration Card);
- Two color photos taken on a white background with a ¾ profile view of the right side of your face. The photographs should be taken within 30 days of the date they are sent to INS. You should print your name and "A"- number lightly in pencil on the back of each photograph.
- A check or money order for the filing fee.

You may also need to send other documents. Please see the checklist at the end of these instructions to determine which other documents you will need to send with your application.

Where Do I Send My Application?

You will need to send your application to one of four INS Service Centers. Use the following list to determine where to send your application and documents:

If you live in Arizona, California, Hawaii, Nevada, Territory of Guam, or the Commonwealth of the Northern Mariana Islands, send your application to:

California Service Center
P.O. Box 10400
Laguna Niguel, CA 92677-0400

If you live in Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Wisconsin, or Wyoming, send your application to:

Nebraska Service Center
P.O. Box 7400
Lincoln, NE 68501-7400

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, send your application to:

Texas Service Center
P.O. Box 851204
Mesquite, TX 75185-1204

If you live in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, DC, West Virginia, Commonwealth of Puerto Rico, or the Virgin Islands of the United States send your application to:

Vermont Service Center
75 Lower Weldon Street
St. Albans, VT 05479-0001

How Do I Complete This Application?

Print clearly or type your answers using CAPITAL letters in each box. Failure to print clearly may delay your application. Please use dark ink.

Please write your INS "A"- number on the top right hand corner of each page. Write your INS "A"- number as it appears on your Permanent Resident Card. Your "A"- number always begins with the letter "A." The "A" is followed by 7 to 9 numbers depending on when you entered the United States. If there are less than 9 numbers following the "A," in your "A"- number, place zeros before the first number to get a *total of 9 numbers*. For example:

A1234567 should be written as A001234567;
A12345678 should be written as A012345678.

See the sample Permanent Resident Cards at the end of these instructions to help you determine your "A"- number.

If a question does not apply to you, write "not applicable" in the space provided.

If you need extra space to answer any item:

- attach a separate sheet of paper;
- write your name, your "A"- number, and "N-400" on the top right corner of the sheet; and
- write the number of the item for which you are providing additional information.

Step-by-Step Instructions

This form is divided into 15 parts. The information below will help you fill out the form.

Part 1. Your Name *(The Person Applying for Naturalization)*

A. Your current legal name— Write your Family Name *(Last Name)*, Given Name *(First Name)*, and Full Middle Name *(if you have one)*.

Note: Your current legal name is the name on your birth certificate, marriage certificate, or your name as changed by any legal action after birth.

B. Your name exactly as it appears on your Permanent Resident Card *(if different from above)*—Write your name exactly as it appears on your card.

C. Other names you have used—If you have used any other name *since becoming a Permanent Resident,* write it in this section. If you have NOT used a different name, write "not applicable" in the space for your Family Name *(Last Name)*.

D. Name change *(optional)*—The courts that perform oath ceremonies allow applicants to change their name when they naturalize. If you decide to change your name, you will be required to complete a Petition for Name Change, during your interview. Your new name

will not be legally binding until after your oath ceremony.

If you decide to change your name, it may delay the date of your oath ceremony. If you decide to change your name, your new name will appear on your Certificate of Naturalization.

If you want to change your name check "Yes" and complete this section. If you do not want to change your name, check "No" and go to Part 2.

Part 2. Basis for Your Application

Check the box that indicates the basis for your application. If the basis for your application is not one of the three options provided, check "other." If you check "other," write a brief description of the basis for your application on the line provided.

Part 3. Information About You

A. **Social Security Number**—Print your social security number. If you do not have one, write "not applicable" in the space provided.

B. **Date of Birth**—Use eight numbers to show your date of birth. Write the date in this order: Month, Day, Year. (Example: May 1, 1998 should be written as 05/01/1998).

C. **Country of Birth**—Write the name of the country where you were born.

D. **Country of Nationality**—Write the name of the country where you are currently a citizen. Write the country even if it no longer exists.
Note: for the purposes of completing this form do not use the term "stateless" as your country of nationality.

E. **Date You Became a Permanent Resident**—The date you became a Permanent Resident can be found on your Permanent Resident Card. See the sample Permanent Resident Cards at the end of these instructions to help you locate the date on your card.
Write the date in this order: Month, Day, Year (Example: May 1, 1998 should be written as 05/01/1998).

Part 4. Addresses and Phone Number

A. **Home Address**— Give the address where you currently live. Please do NOT put post office (P.O.) box numbers here. Also provide a daytime phone number where you can be reached.

B. **Mailing Address**—Give your mailing address if it is different from your home address. Write "same" if your mailing address is the same as your home address.

Part 5. Information for Criminal History Check

The information in this section will be used by the Federal Bureau of Investigation (FBI) to do a criminal history check. Please check the boxes that most apply to you.

Part 6. Information About Your Residence and Employment

A. Give the addresses where you have lived during the last 5 years. Begin with your present address and go back 5 years. Also, write the dates you lived in these places. Write the dates in this order: Month, Day, Year (Example: May 1, 1998 to June 1, 1998 should be written 05/01/1998 to 06/01/1998).

B. List where you have worked (or, if you were a student, the schools you have attended) during the last 5 years. Begin with your most recent employer. Include military service. If you worked for yourself write "self employed." Also, write the dates of your employment. Write the dates in this order: Month, Day, Year (Example: May 1, 1998 to June 1, 1998 should be written 05/01/1998 to 06/01/1998).

Part 7. Absences From the United States ***(Including Trips to Canada and Mexico)***

A. Estimate the number of short trips you have taken outside of the U.S. (7 days or less) since becoming a Permanent Resident.

B. Estimate the total number of days you spent out of the country on short trips since becoming a Permanent Resident.

C. Use the table to provide information on any trips you have taken outside of the U.S. (since becoming a Permanent Resident) that lasted for *more than 7 days.* Include the date you left and the date you returned. If you need more space, use a separate sheet of paper.

Part 8. Information About Your Marital History

A. Provide the requested information about your current marital status. If you check the box "single" go to Part 9.

B. If you are now married, write the requested information about your spouse. If you were married to the same spouse more than one time, treat each time as a separate marriage.

C. Check the box to indicate whether your spouse is a U.S. citizen. Provide information about your spouse depending on if they are a U.S. citizen or if they are not a U.S. citizen.

D. Write the number of times you have been married in the space provided. Please include annulled marriages.

E. Write the number of times your current spouse has been married in the space provided. Please include annulled marriages.

F. If you were married before, please provide information about your prior spouses. If you have had more than two prior spouses, use a separate sheet of paper to provide the same information requested in Section F. Please remember to write your name, "A"- number, and "N-400" on the top right hand corner of each sheet.

Part 9. Information About Your Children

Provide information about all of your children (regardless of where they were born or where they are now living). Include:

- living, missing and deceased children;
- children born out of wedlock;
- children of all ages;
- legally adopted children;
- step-children;
- children who are not living with you; and
- children who are now married.

In the last column ("Location"), write:

- "with me" – if the child lives with you;
- the city, state and country where they live – if the child does NOT live with you; or
- "missing" or "deceased" – if the child is missing or deceased.

If you need more space use a separate sheet of paper.

Part 10. Additional Questions

Answer each question by checking the "Yes" or "No" box. This information will be used by INS to help determine your eligibility for citizenship. For more information on eligibility, please see *A Guide to Naturalization.*

Answer the questions as honestly and accurately as possible. If you do not, INS may deny your application for lack of good moral character.

Part 11. Disability Accommodations Request

Some people with disabilities need special consideration during the naturalization process. The INS will make every effort to make reasonable accommodations in these cases. For example, if you use a wheelchair, we will make sure you can be fingerprinted and interviewed, and attend an oath ceremony at a location that is wheelchair accessible. If you are hearing impaired and need a sign language interpreter, INS will arrange to have one at your interview. If you have an assistant or use a service animal, the assistant or animal may accompany you, as long as their presence is not disruptive.

People with disabilities that prevent them from demonstrating their knowledge of English or U.S. History and Government may file a Form N-648 along with their N-400 to request a waiver of this requirement. Please see the instructions for Form N-648 for additional information on how to complete the N-648.

Part 12. Your Signature

After reading the statement in Part 12, you must sign and date it. An unsigned application will be returned to you. You should sign your full name without abbreviating. The signature must be legible.

Part 13. Signature of Person Who Prepared This Application for You

If someone helped you fill out this form, he or she must complete this section.

Part 14. Signature at Interview

Do NOT complete this part. You will be asked to complete this part at the time of your interview.

Part 15. Oath of Allegiance

Do NOT complete this part. You will be asked to complete this part at the time of your interview.

If your application is approved, you will be required to take this Oath of Allegiance to become a citizen. In very limited cases the Oath can be changed (see *A Guide to Naturalization* for more information).

Privacy Act Notice

INS asks for the information on this form and associated evidence to determine your eligibility for this immigration benefit. Form N-400 processes are generally covered in 8 U.S.C. 1439, 1440, 1443, 1445, 1446, and 1452. INS may provide information from your application to other government agencies.

Paperwork Reduction Act Notice

An agency may not conduct or sponsor an information collection and a person is not required to respond to an information collection unless the agency displays a valid OMB control number. INS tries to create forms and instructions that are accurate and easy to understand. This is often difficult because the law is very complicated. We estimate it will take 2 hours to complete this form and 4 hours to collect the required documents. If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, DC 20536.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, INS will deny your application for naturalization. We may also deny other immigration benefits. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution

If you are granted naturalization and knowingly and willfully falsify or conceal a material fact or submit a false document with this request, you may be subject to revocation of your naturalization.

Documents you need to submit with your N-400:

All applicants must send:

- ❑ A photocopy of both sides of your Permanent Resident Card (formerly known as Alien Registration Card);
- ❑ Two color photographs (¾ frontal image); AND
- ❑ A check or money order.

If an attorney or accredited representative is acting on your behalf, send:

- ❑ Form G-28, "Notice of Entry of Appearance as Attorney or Representative."

If your current legal name is different than the name on your Permanent Resident Card, send:

- ❑ The document that legally changed your name (marriage license, divorce decree, OR court document) OR a detailed explanation of why you use a different name.

If you are applying for naturalization on the basis of marriage to a United States citizen, send:

- ❑ Proof that your spouse has been a U.S. citizen for the past 3 years (birth certificate, naturalization certificate, certificate of citizenship, copy of the inside of the front cover and signature page of your spouse's valid U.S. passport, OR Form FS240, "Report of Birth Abroad of a Citizen of the United States of America");
- ❑ Your current marriage certificate;
- ❑ Proof of termination of ALL of your spouse's prior marriages (divorce decree OR death certificate); AND
- ❑ An original IRS 1722 letter listing tax information for the past 3 years OR copies of the income tax forms you filed for the past 3 years.

If you were previously married, send:

- ❑ Proof of termination of ALL of your prior marriages (divorce decree OR death certificate).

If you have ever been in the United States military, send:

- ❑ An original Form N-426, "Request for Certification of Military or Naval Service;" AND
- ❑ An original Form G-325B, "Biographic Information."

If you have taken a trip outside of the United States that lasted for 6 months or more since becoming a Permanent Resident, send:

- ❑ An original IRS 1722 letter listing tax information for the past 5 years (or for the past 3 years if you are applying on the basis of marriage to a U.S. citizen).

If you have a dependent spouse or children and have been ordered to provide financial support, send:

- ❑ Copies of the court or government order to provide financial support; AND
- ❑ Evidence that you have complied with the court or government order (cancelled checks, money order receipts, a court or agency printout of child support payments, OR evidence of wage garnishments).

If you answer "yes" to questions 1 through 12 in Part 10, send:

- ❑ A written explanation on a separate sheet of paper.

If you answer "yes" to questions 18 through 29, send:

- ❑ A written explanation on a separate sheet of paper.

If you answer "no" to questions 30 through 36 in Part 10, send:

- ❑ A written explanation on a separate sheet of paper.

If you have ever been arrested or detained by any law enforcement officer for any reason and no charges were filed, send:

- ❑ An official statement from the arresting agency or applicable court indicating that no charges were filed.

(OVER)

If you have ever been arrested or detained by any law enforcement officer for any reason and charges were filed, send:

- ❑ An original or a certified copy of the complete court disposition for each incident (dismissal order, conviction record, OR acquittal order).

If you have ever been convicted or placed in an alternative sentencing program or rehabilitative program, send:

- ❑ The sentencing record for each incident; AND
- ❑ Evidence that you completed your sentence (probation record, parole record, OR evidence that you completed an alternative sentencing program or rehabilitative program).

If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, send:

- ❑ An original or a certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction.

If you have ever failed to file an income tax return when it was required by law, send:

- ❑ Copies of all correspondence with the Internal Revenue Service (IRS) regarding your failure to file.

If you have any federal, state, or local taxes that are overdue, send:

- ❑ A signed agreement from the IRS or state or local tax office showing that you have filed a tax return and arranged to pay the taxes you owe; AND
- ❑ Documentation from the IRS or state or local tax office showing the current status of your repayment program.

If you are applying for a disability exception to the testing requirement, send:

- ❑ An original Form N-648, "Medical Certification for Disability Exceptions," completed by a licensed medical doctor or licensed clinical psychologist.

If you did not register with the Selective Service and you 1) are male, 2) are over 26 years old, 3) were born on or after January 1, 1960, and 4) were a Permanent Resident between the ages of 18 and 26, send:

- ❑ A "Status Information Letter" from the Selective Service (call 1-847-688-6888 for more information).

Note: if you registered with Selective Service, please remember to write your Selective Service number in the space provided on your N-400 in Section 10. If you do not know your Selective Service number call 1-847-688-6888.

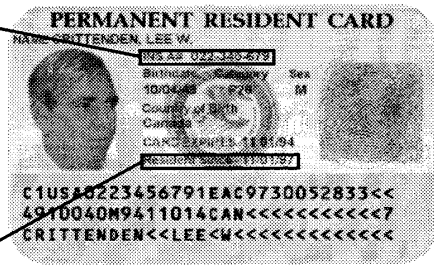
Sample Permanent Resident Cards

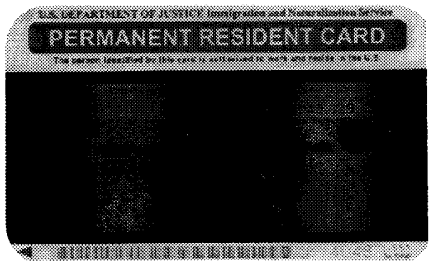
Your Permanent Resident Card (formerly known as Alien Registration Card) has useful information that you need when you apply for naturalization. Below are some common types of Permanent Resident Cards. Look at these examples to see where to find the information you need.

FRONT **BACK**

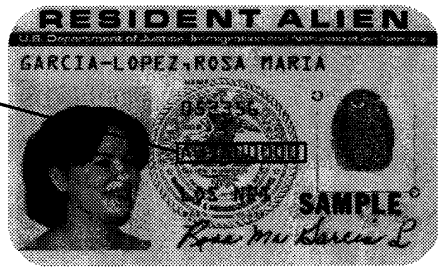
"A"- number

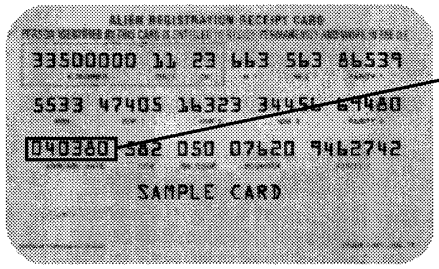
Date you became a Permanent Resident *(November 1, 1997)*





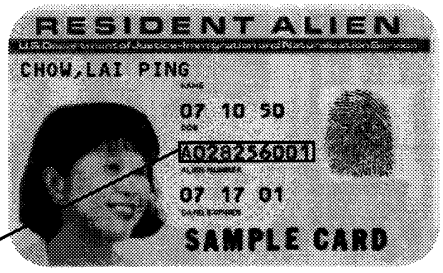
"A"- number

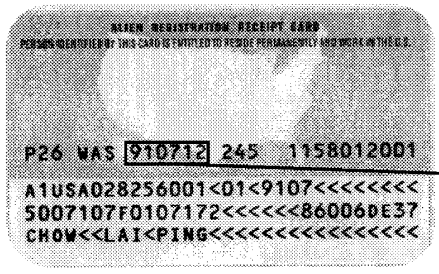




Date you become a Permanent Resident *(April 3, 1980)*

"A"- number





Date you became a Permanent Resident *(July 12, 1991)*

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0009
Application for Naturalization

Please print clearly or type your answers using CAPITAL letters. Failure to print clearly may delay your application. Please use dark ink.

Part 1. Your Name ***(The Person Applying for Naturalization)***

Write your INS "A"- number here: A _ _ _ _ _ _ _ _ _

A. Your current legal name

Family Name *(Last Name)*

Given Name *(First Name)* | Full Middle Name *(if you have one)*

B. Your name exactly as it appears on your Permanent Resident Card *(if different from above)*

Family Name *(Last Name)*

Given Name *(First Name)* | Full Middle Name *(if you have one)*

C. If you have ever used another name since becoming a Permanent Resident, please provide it below:

Family Name *(Last Name)*

Given Name *(First Name)* | Full Middle Name *(if you have one)*

D. Name change *(optional)*

The courts that perform naturalization oath ceremonies also allow applicants to change their name when they naturalize. Please read the instructions before you decide to change your name. Also note that choosing to change your name may delay your oath ceremony.

1. Would you like to legally change your name? ☐ Yes ☐ No
2. If yes, print the new name you would like to use. Please do not use initials or abbreviations when writing your name.

Family Name *(Last Name)*

Given Name *(First Name)* | Full Middle Name *(if you have one)*

FOR INS USE ONLY

Bar Code | Date Stamp

Remarks

Action

Part 2. Basis for Your Application ***(Please Check Only One).***

☐ I have been a Permanent Resident for at least 5 years.

☐ I have been a Permanent Resident for the past 3 years, AND
I have been married to (and living with) the same U.S. citizen for the past 3 years, AND
my spouse has been a U.S. citizen for the past 3 years.

☐ I am a Permanent Resident who has served in the U.S. Armed Forces for 3 years or more AND
I am still serving or I will be sending this application within 6 months of my honorable discharge from the service.

☐ Other (please explain) _____

Part 3. Information About You

Write your INS "A"- number here: A _ _ _ _ _ _ _ _ _

A. Social Security Number

_ _ _ - _ _ - _ _ _ _

B. Date of Birth *(Month/Day/Year)*

_ _ / _ _ / _ _ _ _

C. Country of Birth

D. Country of Nationality

E. Date You Became a Permanent Resident *(Month/Day/Year)*

_ _ / _ _ / _ _ _ _

Part 4. Addresses and Phone Number

A. Home Address - Street Number and Name *(do NOT write P.O. Box in this space)*

Apartment Number

Daytime Phone Number ( )

City

County

State

ZIP Code

B. Mailing Address - Street Number and Name *(if different from home address)*

Apartment Number

City

State

ZIP Code

Part 5. Information for Criminal History Check

The information in this section will not directly affect your eligibility for naturalization. It will be used by the Federal Bureau of Investigation (FBI) to a criminal history check that will be given to INS.

Note: The categories below are those used by the FBI.

A. Gender

☐ Male ☐ Female

B. Height

Feet Inches

C. Weight

Pounds

D. Race

☐ Native American or Alaskan Native ☐ Asian or Pacific Islander ☐ Black ☐ White ☐ Other

E. Hair color

☐ Black ☐ Bald (No Hair) ☐ White ☐ Brown ☐ Sandy ☐ Red ☐ Gray ☐ Blonde ☐ Unknown

F. Eye color

☐ Black ☐ Brown ☐ Green ☐ Gray ☐ Pink ☐ Hazel ☐ Blue ☐ Maroon ☐ Unknown

Part 6. Information About Your Residence and Employment

Write your
INS "A"- number here: A _ _ _ _ _ _ _ _ _

A. Where have you lived during the last 5 years? Begin with your present address and go back 5 years. If you need more space, use a separate sheet of
paper.

Street Number and Name, Apartment Number, City, State, and Country	Dates *(Month/Day/Year)*	
	From	To
	__/__/____	**Present**
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____
	__/__/____	__/__/____

B. Where have you worked (or, if you were a student, what schools did you attend) during the last 5 years? Begin with your most recent employer. Include military service. If you need more space, use a separate sheet of paper.

Employer or School Name	Employer or School Address City and State	Dates *(Month/Day/Year)*		Your Occupation
		From	To	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	
		__/__/____	__/__/____	

Part 7. Absences From the United States *(Including Trips to Canada and Mexico)*

Write your INS "A"- number here: A _ _ _ _ _ _ _ _ _

A. How many short trips have you taken outside the U.S. since becoming a Permanent Resident *(only count trips that lasted 7 days or less)*? __________

B. About how many days did you spend outside of the U.S. on short trips since becoming a Permanent Resident *(trips that lasted 7 days or less)*? ________

C. If you have taken any trips outside of the U.S. since becoming a Permanent Resident that have lasted for *more than* 7 days, please list them below.

Country to Which You Traveled	Purpose of Your Trip	Date You Left the U.S. *(Month/Day/Year)*	Date You Returned to the U.S. *(Month/Day/Year)*	Total Number of Days You Were Out of the U.S.
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	
	☐ Business ☐ Pleasure	_ _/_ _/_ _ _ _	_ _/_ _/_ _ _ _	

Part 8. Information About Your Marital History

A. What is your current marital status?

☐ Single, Never Married *(if you check "Single," go to Part 9)* ☐ Married ☐ Divorced ☐ Separated ☐ Widowed ☐ Other

B. If you are now married, please give the following information about your spouse:

Spouse's Family Name *(Last Name)* | Given Name *(First Name)* | Full Middle Name *(if he or she has one)*

Home Address - Street Number and Name | Apartment Number | Spouse's Social Security Number _ _ _-_ _-_ _ _ _

City | State | ZIP Code

C. Is your spouse a U.S. citizen? ☐ Yes ☐ No

If your spouse is a U.S. citizen, please give the following information:

Date your spouse became a citizen *(Month/Day/Year)* _ _/_ _/_ _ _ _

Place your spouse became a citizen *(if born in the U.S., give place of birth)*

City and State

If your spouse is NOT a U.S. citizen, please give the following information *(if applicable)*:

Spouse's INS "A"- Number A _ _ _ _ _ _ _ _ _

Spouse's Country of Nationality

Spouse's Immigration Status ☐ Lawful Permanent Resident ☐ Other ____________

Part 8. Information About Your Marital History *(continued)*

Write your INS "A"- number here: A _ _ _ _ _ _ _ _ _

D. How many times have you been married (include annulled marriages)? __________

E. How many times has your current spouse been married (include annulled marriages)? __________

F. If you were married before, please provide the following information about your prior spouses.

1. Prior Spouse's Family Name *(Last Name)*

Given Name *(First Name)*

Full Middle Name *(if he or she has one)*

Prior Spouse's Immigration Status

☐ United States Citizen
☐ Lawful Permanent Resident
☐ Other ________________

Date of Marriage *(Month/Day/Year)* __/__/____

Date Marriage Ended *(Month/Day/Year)* __/__/____

How Marriage Ended

☐ Divorce ☐ Spouse Deceased ☐ Other ________________

2. Prior Spouse's Family Name *(Last Name)*

Given Name *(First Name)*

Full Middle Name *(if he or she has one)*

Prior Spouse's Immigration Status

☐ United States Citizen
☐ Lawful Permanent Resident
☐ Other ________________

Date of Marriage *(Month/Day/Year)* __/__/____

Date Marriage Ended *(Month/Day/Year)* __/__/____

How Marriage Ended

☐ Divorce ☐ Spouse Deceased ☐ Other ________________

Part 9. Information About Your Children

A. How many sons and daughters have you had *(anywhere in the world)*? ________

B. Provide the following information about all of you children *(regardless of where they were born or where they are now)*. For more information on which children you should include and how to complete this section, please see the instructions. If you need more space use a separate sheet of paper.

Full Name of Child	Date of Birth *(Month/Day/Year)*	Country of Birth	Current Citizenship	INS "A"- number *(if child has one)*	Location *(City, State, Country)*
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	
	__/__/____			A _ _ _ _ _ _ _ _ _	

Part 10. Additional Questions

Write your INS "A"- number here A _ _ _ _ _ _ _ _ _

Please answer questions 1 through 12. If you answer "Yes" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "Yes" and (2) provide any additional information you think INS should know about your answer.

A. General Questions

1. Have you **EVER** claimed to be a U.S. citizen *(in writing or any other way)*? ☐ Yes ☐ No
2. Have you **EVER** registered to vote or voted in any federal, state, or local election in the U.S.? ☐ Yes ☐ No
3. Have you **EVER** failed to file a federal, state, or local tax return? ☐ Yes ☐ No
4. Do you have any federal, state, or local taxes that are overdue? ☐ Yes ☐ No
5. Were you born with (or do you have) any title of nobility in any foreign country? ☐ Yes ☐ No
6. Have you ever been declared mentally incompetent or been confined to a mental institution? ☐ Yes ☐ No

B. Affiliations

7. a. Are you currently a member of or in any way connected *(either directly or indirectly)* with the Communist Party? ☐ Yes ☐ No

   b. Have you **EVER** been a member of or in any way connected *(either directly or indirectly)* with the Communist Party? ☐ Yes ☐ No

   c. Have you **EVER** advocated, believed in, or knowingly supported communism or any other totalitarian party? ☐ Yes ☐ No

8. Between March 23, 1933, and May 8, 1945, did you work for or associate in any way *(either directly or indirectly)* with:

   a. The Nazi government of Germany? ☐ Yes ☐ No

   b. Any government in any area (1) occupied by, (2) allied with, or (3) established with the help of the Nazi government of Germany? ☐ Yes ☐ No

   c. Any German, Nazi, or S.S. military unit, paramilitary unit, self-defense unit, vigilante unit, citizen unit, extermination camp, concentration camp, prisoner of war camp, prison, labor camp, or transit camp? ☐ Yes ☐ No

9. Have you **EVER** persecuted any person because of race, religion, national origin, membership in a particular social group, or political opinion? ☐ Yes ☐ No
10. Have you **EVER** advocated *(either directly or indirectly)* the overthrow by force or violence of the U.S. government? ☐ Yes ☐ No

C. Continuous Residence

11. Have you **EVER** called yourself a "nonresident" on a federal, state, or local tax return? ☐ Yes ☐ No
12. Have you **EVER** failed to file a federal, state, or local tax return because you considered yourself to be a "nonresident"? ☐ Yes ☐ No

Part 10. Additional Questions *(Continued)*

Write your INS "A" - number here A _ _ _ _ _ _ _ _ _

D. Good Moral Character

13. Have you **EVER** been arrested or detained by any law enforcement officer for any reason? ☐ Yes ☐ No

14. Have you **EVER** been convicted of a crime, placed in an alternative sentencing program, or placed in a rehabilitative program? ☐ Yes ☐ No

15. Have you **EVER** had any arrest or conviction removed, vacated, set aside, sealed, or expunged from your record? ☐ Yes ☐ No

16. Have you **EVER** received a suspended sentence, been placed on probation, or been paroled? ☐ Yes ☐ No

17. Have you **EVER** been in jail or prison? ☐ Yes ☐ No

If you answered yes to questions 13 through 17, please complete the following table. If you need more space or have more than three incidents to report, please use a separate sheet of paper. Please see the document checklist in the instructions to help you decide which documents to send with your application.

Why were you arrested or detained?	Date *(Month/Day/Year)*	Where *(City, State, Country)*	Outcome of the arrest? *(for example, jail, probation, etc.)*

Please answer questions 18 through 29. If you answer "Yes" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "Yes," and (2) provide any additional information you think INS should know about your answer.

18. Have you **EVER** committed a crime for which you were not arrested? ☐ Yes ☐ No

19. Have you **EVER**:
    a. been an alcoholic? ☐ Yes ☐ No
    b. been a prostitute, paid for a prostitute, or attempted to procure a person for prostitution? ☐ Yes ☐ No
    c. sold or smuggled controlled substances? ☐ Yes ☐ No
    d. practiced polygamy *(married to more than one person at the same time)*? ☐ Yes ☐ No
    e. helped anyone enter or try to enter the U.S. illegally? ☐ Yes ☐ No
    f. gambled illegally? ☐ Yes ☐ No
    g. failed to pay child support or alimony? ☐ Yes ☐ No

20. Have you **EVER** lied to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal? ☐ Yes ☐ No

21. Have you **EVER** lied to any U.S. government official to gain entry or admission into the U.S.? ☐ Yes ☐ No

E. Removal, Exclusion, and Deportation Proceedings

22. Are removal, exclusion, or deportation proceedings pending against you? ☐ Yes ☐ No

23. Have you **EVER** been removed, excluded, or deported from the U.S.? ☐ Yes ☐ No

24. Have you **EVER** been ordered removed, excluded, or deported from the U.S.? ☐ Yes ☐ No

25. Have you **EVER** applied for suspension of deportation or cancellation of removal? ☐ Yes ☐ No

Part 10. Additional Questions *(Continued)*

Write your
INS "A" - number here A _ _ _ _ _ _ _ _ _

F. Military Service

26. Have you **EVER** left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☐ No

27. Are you a male (1) who was born on or after January 1, 1960 and (2) who was a Permanent Resident between the ages of 18 and 26 who did NOT register with the Selective Service? ☐ Yes ☐ No

If you HAVE REGISTERED, complete the following:
Selective Service Number _____
Date Registered _____

If you REGISTERED BEFORE 1976, also provide the following:
Local Board Number _____
Classification _____

If you have NOT REGISTERED and are under the age of 26, register before you apply for naturalization.

If you have NOT REGISTERED and are over 26, attach a statement explaining why you did not register.

28. Have you **EVER** applied for an exemption from military service in the U.S. Armed Forces? ☐ Yes ☐ No

29. Have you **EVER** deserted from the U.S. Armed Forces? ☐ Yes ☐ No

Please answer questions 30 through 36. If you answer "No" to any of these questions, include a written explanation with this form. Your written explanation should (1) explain why your answer was "No" and (2) provide any additional information you think INS should know about your answer.

G. English and U.S. History and Government Requirements

30. Can you speak, read, and write simple words and phrases in English? ☐ Yes ☐ No

31. Do you know the fundamentals of U.S. History and. Government? ☐ Yes ☐ No

Note: Certain applicants, because of age or disability, are exempt from some of the English and History/Government requirements. Please see the instructions for Part 11 and *A Guide to Naturalization* for more information.

H. Oath Requirements

32. Do you support the Constitution and form of government of the U.S.? ☐ Yes ☐ No

33. Do you understand and are you willing to take the full Oath of Allegiance to the U.S.? ☐ Yes ☐ No

34. If the law requires it, are you willing to bear arms on behalf of the U.S.? ☐ Yes ☐ No

35. If the law requires it, are you willing to perform noncombatant services in the U.S. Armed Forces? ☐ Yes ☐ No

36. If the law requires it, are you willing to perform work of national importance under civilian direction? ☐ Yes ☐ No

Part 11. Disability Accommodations Request

Write your INS "A"- number here: A _ _ _ _ _ _ _ _ _

Would you like to request an accommodation because of a disability? ☐ Yes ☐ No

If yes, please check the box below that applies:

☐ I am hearing impaired and will need a sign language interpreter.

☐ I have attached a Form N-648

☐ I will need another type of accommodation. Please explain:_____

_____

_____

_____

_____

Part 12. Your Signature

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct. I also authorize the release of any information which INS needs to determine my eligibility for the benefit I am seeking.

Your Signature

Date *(Month/Day/Year)* _ _/ _ _/ _ _ _ _

Part 13. Signature of Person Who Prepared This Application for You *(if applicable)*

I declare under penalty of perjury that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above named person in response to the *exact questions* contained on this form.

Preparer's Printed Name

Preparer's Signature

Date *(Month/Day/Year)* _ _/ _ _/ _ _ _ _

Preparer's Firm Name *(if applicable)*

Preparer's Daytime Phone Number ( )

Preparer's Address - Street Number and Name

City

State

ZIP Code

Write your
INS "A"- number here: A _ _ _ _ _ _ _ _ _

Do Not Complete Parts 14 and 15 Until Instructed To Do So

Part 14. Signature at Interview

I swear that this application and all supporting documentation, including the corrections numbered 1 through _____ and the testimony I provided under oath at this interview are all true and correct.

Subscribed and sworn to before me.

Complete and True Signature of Applicant

Examiner's Signature

Date *(Month/Day/Year)*
_ _/_ _/_ _ _ _

Date *(Month/Day/Year)*
_ _/_ _/_ _ _ _

Part 15. Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;
that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;
that I will bear true faith and allegiance to the same;
that I will bear arms on behalf of the United States when required by the law;
that I will perform noncombatant service in the Armed Forces of the United States when required by the law;
that I will perform work of national importance under civilian direction when required by the law; and
that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

Your Printed Name

Your Signature

[FR Doc. 99–370 Filed 1–7–99; 8:45 am]
BILLING CODE 4410–18–C

DEPARTMENT OF LABOR

Employment and Training Administration

Dresser Oil Tools, Dresser Industries, Inc., Production and Sales Representatives, TA–W–34, 762, Operating at Various Locations in Texas Including Dallas, Texas; TA–W–34, 762E and Operating at Various Locations in North Dakota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 18, 1998, applicable to the Dresser Oil Tools, Production and Sales Representatives, operating at various locations in Texas, including Dallas. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information submitted to the Department shows that worker separations have occurred at Dresser Oil Tools, Dresser Industries, Incorporated in North Dakota. The workers are engaged in employment related to the production of oilfield equipment.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports of oilfield equipment. Therefore, the Department is amending the certification to expand coverage to workers of the subject firm operating at various locations in North Dakota.

The amended notice applicable to TA–W–34, 762 is hereby issued as follows:

All workers of Dresser Oil Tools, Dresser Industries, Incorporated, Production and Sales Representatives, operating at various locations in Texas including Dallas (TA–W–34, 762), and operating at various locations in North Dakota (TA–W–34, 762E), who became totally or partially separated from employment on or after July 6, 1997 through September 18, 2000, are eligible to apply for worker adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C, this 17th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–407 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,041]

JRF Enterprises Including Leased Workers of SkilStaf, Inc., Scottsboro, Alabama; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 12, 1998, applicable to all workers of JRF Enterprises located in Scottsboro, Alabama. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that most of the workers for JRF Enterprises were leased from SkilStaf, Inc., which is located in Alexander City, Alabama. The leased workers produced t-shirts and sweatshirts for JRF Enterprises at the Scottsboro plant. Based on these findings, the Department is amending the certification to include leased workers from SkilStaf, Inc., Alexander City, Alabama producing t-shirts and sweatshirts for JRF Enterprises at the subject firms' production facility in Scottsboro.

The intent of the Department's certification is to include all workers of JRF Enterprises adversely affected by imports.

The amended notice applicable to TA–W–35,041 is hereby issued as follows:

All workers of JRF Enterprises, Scottsboro, Alabama; and leased workers of SkilStaf, Inc., Alexander City, Alabama, engaged in employment related to the production of t-shirts and sweatshirts at JRF Enterprises, Scottsboro, Alabama, who became totally or partially separated from employment on or after September 21, 1997 through November 12, 2000, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–402 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 938]

Kevlaur Industries, Inc., Howland, ME; Notice of Termination of Investigation

Pursuant to section 250(a) of the Trade Act of 1974, as amended, an investigation was initiated on September 8, 1998, in response to a petition filed on behalf of workers at Kevlaur Industries, Inc., Howland, Maine.

The petitioner requested that the petition be withdrawn, but never supplied a formal request for withdrawal.

Since the petitioner was unwilling to provide the information necessary to complete the investigation, the investigation has been terminated.

Signed in Washington, DC, this 8th day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–405 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,401]

Nu-Tek Foods, Inc. Wapakoneta, OH; Notice of Termination of Investigation

Pursuant to section 221(a) of the Trade Act of 1974, as amended, an investigation was initiated on December 21, 1998, in response to a petition filed on behalf of workers at Nu-Tek Food, Inc., Wapakoneta, Ohio.

The petitioner formally requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–403 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,683]

Topps Safety Apparel Greensburg, KY; Notice of Revised Determination on Reopening

On November 9, 1998, the petitioners requested Administrative Reconsideration for workers and former workers of the subject firm engaged in the production of safety apparel.

The initial investigation resulted in a negative determination issued on September 29, 1998, because imports did not contribute importantly to the worker separations. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

New information submitted to the Department by the petitioners and additional information supplied by the primary customer of the subject firm revealed that, although the subject firm's inability to provide the service-after-purchase option offered by its competitor, that competitor will be providing an important percentage of the goods it sells to the customer from foreign sources.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with apparel produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Topps Safety Apparel, Greensburg, Kentucky who became totally or partially separated from employment on or after June 12, 1997 through two years from the date of this certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 28th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–401 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Westark Garment Manufacturing, TA–W–34,460, Waldron, AR, TA–W–34,460B, Magazine, AR, and, TA–W–34,460C, Fort Smith, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1998 applicable to all workers of Westark Garment Manufacturing, Waldron, Arkansas. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information from the company shows that worker separations will occur at Westark Garment Manufacturing's Magazine and Fort Smith, Arkansas production facilities when they close December 23, 1998. The workers are engaged in employment related to the production of jackets used for decoration and recognition.

Accordingly, the Department is amending the certification to cover workers at Westark Garment Manufacturing, Magazine and Fort Smith, Arkansas.

The intent of the Department's certification is to include all workers of Westark Garment Manufacturing adversely affected by increased imports.

The amended notice applicable to TA–W–34,460 is hereby issued as follows:

All workers of Westark Garment Manufacturing, Waldron Arkansas, (TA–W–34,460), Magazine, Arkansas (TA–W–34,460B) and Forth Smith, Arkansas (TA–W–34,460C) who became totally or partially separated from employment on or after March 25, 1997 through May 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–404 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,364]

Westark Garment Manufacturing, Magazine, AR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1998 in response to a worker petition which was filed on behalf of workers at the Westark Garment Manufacturing, Magazine, Arkansas.

An active certification covering the petitioning group of workers is already in effect (TA–W–34,460B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–406 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,324]

Cooper Cameron Corp., Cooper Turbocompressor Division, Cheektowaga, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 7, 1998 in response to a worker petition which was filed on behalf of workers at Cooper Cameron Corporation, Cooper Turbocompressor Division, Cheektowaga, New York.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,247). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–398 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,158]

Quickie Manufacturing Corp. & Assembly Services, Inc., El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 16, 1998, applicable to workers of Quickie Manufacturing Corporation and Assembly Services, Incorporated, El Paso, Texas. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce wet mops, dust mops and plastic brooms. New findings show that there was previous certification, TA–W–32,882, issued on December 2, 1996, for workers of Assembly Services, Incorporated, El Paso, Texas who were engaged in employment related to the production of sweeping brooms. That certification expired December 2, 1998. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date to December 3, 1998, for the workers of Assembly Services, Incorporated, engaged in employment related to the production of brooms.

The amended notice applicable to TA–W–35,158 is hereby issued as follows:

All workers of Assembly Services, Incorporated, El Paso, Texas engaged in employment related to the production of sweeping brooms who became totally or partially separated from employment on or after December 3, 1998; and all workers of Quickie Manufacturing Corporation, including workers of Assembly Services, Incorporated, El Paso, Texas engaged in employment related to the production of wet mops, dust mops, and plastic brooms (except as stipulated above for workers of Assembly Services, Incorporated producing sweeping brooms), who became totally or partially separated from employment on or after October 21, 1997 through December 16, 2000, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–400 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02719]

Quickie Manufacturing Corp. & Assembly Services, Inc., El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on December 16, 1998, applicable to all workers of Quickie Manufacturing Corporation, including workers of Assembly Services, Inc., located in El Paso, Texas. The notice will soon be published in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce wet mops, dust mops and plastic brooms. New findings show that there was previous certification, NAFTA–1285, issued on December 2, 1996, for workers of Assembly Services, Incorporated, El Paso, Texas who were engaged in employment related to the production of sweeping brooms. That certification expired December 2, 1998. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date to December 3, 1998, for the workers of Assembly Services, Incorporated, engaged in employment related to the production of brooms.

The amended notice applicable to NAFTA–02719 is hereby issued as follows:

All workers of Assembly Services, Incorporated, El Paso, Texas engaged in employment related to the production of sweeping brooms who became totally or partially separated from employment on or after December 3, 1998; and all workers of Quickie Manufacturing Corporation, including workers of Assembly Services, Incorporated, El Paso, Texas engaged in employment related to the production of wet mops, dust mops, and plastic brooms (except as stipulated above for workers of Assembly Services, Incorporated producing sweeping brooms), who became totally or partially separated from employment on or after October 21, 1997 through December 16, 2000, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC., this 16th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–399 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

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

Connecticut
CT980001 (Feb. 13, 1998)
CT980003 (Feb. 13, 1998)
CT980004 (Feb. 13, 1998)
New York
NY980003 (Feb. 13, 1998)
NY980013 (Feb. 13, 1998)
NY980018 (Feb. 13, 1998)

Volume II

Maryland
MD980002 (Feb. 13, 1998)
MD980021 (Feb. 13, 1998)
MD980028 (Feb. 13, 1998)
MD980029 (Feb. 13, 1998)
MD980037 (Feb. 13, 1998)
MD980042 (Feb. 13, 1998)
MD980058 (Feb. 13, 1998)
MD980059 (Feb. 13, 1998)
Virginia
VA980002 (Feb. 13, 1998)
VA980007 (Feb. 13, 1998)
VA980040 (Feb. 13, 1998)
VA980091 (Feb. 13, 1998)
VA980091 (Feb. 13, 1998)
VA980098 (Feb. 13, 1998)

Volume III

None

Volume IV

None

Volume V

Arkansas
AR980008 (Feb. 13, 1998)
AR980023 (Feb. 13, 1998)
AR980027 (Feb. 13, 1998)
Iowa
IA980001 (Feb. 13, 1998)
Missouri
MO980001 (Feb. 13, 1998)
MO980003 (Feb. 13, 1998)
MO980004 (Feb. 13, 1998)
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MO980014 (Feb. 13, 1998)
MO980015 (Feb. 13, 1998)
MO980042 (Feb. 13, 1998)
MO980051 (Feb. 13, 1998)
MO980058 (Feb. 13, 1998)
MO980062 (Feb. 13, 1998)
MO980067 (Feb. 13, 1998)

Volume VI

Alaska
AK980001 (Feb. 13, 1998)
Idaho
ID980001 (Feb. 13, 1998)
ID980002 (Feb. 13, 1998)
ID980003 (Feb. 13, 1998)
ID980004 (Feb. 13, 1998)
ID980013 (Feb. 13, 1998)
ID980014 (Feb. 13, 1998)
Oregon
OR980001 (Feb. 13, 1998)
OR980017 (Feb. 13, 1998)
Washington
WA980001 (Feb. 13, 1998)
WA980002 (Feb. 13, 1998)
WA980003 (Feb. 13, 1998)
WA980007 (Feb. 13, 1998)
WA980008 (Feb. 13, 1998)
WA980009 (Feb. 13, 1998)
WA980011 (Feb. 13, 1998)

Volume VII

Hawaii
HI980001 (Feb. 13, 1998)

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 30 day of December 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–196 Filed 1–7–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–002]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee meeting.

DATES: Thursday, February 11, 1999, 9:00 a.m. to 5:00 p.m. and Friday,

February 12, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–5792.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Review of NASA Strategic Planning and Roadmaps
—Review of Aviation System Capacity Program
—Review of Advanced Air Traffic Technology (AATT) Project Progress
—Review of Program Planning and Focusing

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: December 30, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–425 Filed 1–7–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–001]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS) Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Wednesday, January 20, 1999, from 8:00 a.m. until 5:00 p.m.; and Thursday, January 21, 1999 from 8:00 a.m. until 11:30 a.m. and from 1:00 p.m. until 2:00 p.m.

ADDRESSES: Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. W. Michael Hawes, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room, from 8:00 a.m. until 5:00 p.m. on Wednesday, January 20, 1999. The meeting will reconvene at 8:00 a.m. until 11:30 a.m. and from 1:00 p.m. until 2:00 p.m. Thursday, January 21, 1999. The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—ISS Status—Operations, Development
—Russian Status
—Commercial Space Act
—Assembly Sequence
—Crew Time Use
—Probability Risk Assessment
—Pre-Planned Program Improvement

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: December 29. 1998.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–424 Filed 1–7–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Program for Credit Unions throughout calendar year 1999, subject to availability of funds. Application procedures for qualified low-income credit unions are set forth in part 705, NCUA Rules and Regulations, 12 CFR part 705.

DATES: Applications may be submitted throughout calendar year 1999.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: The Office of Community Development Credit Unions at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA Rules and Regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities which result in increased income, ownership and employment. The Program makes available low interest loans and deposits in amounts up to $300,000 in the aggregate to qualified participating ''low-income'' credit unions. Program participation is limited to existing credit unions with an official ''low-income'' designation. Student credit unions are not eligible to participate in this program.

This notice is published pursuant to § 705.9 of the NCUA Rules and Regulations, 12 CFR 705.9, which states that NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 17, 1998.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 99–366 Filed 1–7–99; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR 31, General Domestic Licenses for Byproduct Material.

2. *Current OMB approval number:* 3150–0016.

3. *How often the collection is required:* Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

4. *Who is required or asked to report:* Persons receiving, possessing, using, or

transferring byproduct material in certain items.

5. *The number of annual respondents:* Approximately 10,126 NRC general licensees and 20,252 Agreement State general licensees.

6. *The number of hours needed annually to complete the requirement or request:* 2,634 hours for NRC licensees and 5,265 hours for Agreement State licensees.

7. *Abstract:* 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in Part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

Submit, by March 9, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 31st day of December, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Office.

[FR Doc. 99–373 Filed 1–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318 and 72–18]

Baltimore Gas and Electric Company; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Materials License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the indirect transfer of Operating License Nos. DPR–53 and DPR–69 for Calvert Cliffs Unit Nos.1 and 2 and Materials License No. SMN–2505 for the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), held by Baltimore Gas and Electric Company (BGE). The indirect transfer would be to a proposed holding company to be created above BGE.

By application dated November 20, 1998, BGE informed the Commission of a proposed corporate restructuring of BGE under which a new holding company would be formed and BGE would become a wholly owned subsidiary of the new holding company. The application requested consent to the extent the proposed restructuring would effect a transfer of control of the license. Under the proposed restructuring, BGE would continue to hold the license and there would be no direct transfer of the licenses. According to the application, BGE would remain an ''electric utility'' as defined in 10 CFR 50.2.

The proposed restructuring does not involve any change in the design or operation of either the Calvert Cliffs Nuclear Power Plant or the Calvert Cliffs ISFSI, or any change in the terms and conditions of the existing licenses or Technical Specifications.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding license transfer applications, are discussed below.

By January 28, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. Charles H. Cruse, Vice President—Nuclear Energy, Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Power Plant, 1650 Calvert Cliffs Parkway, Lusby, MD 20657–4072; the attorney for the licensee, Mr. Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, D.C. 20037; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 8, 1999 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, Washington, D.C. 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 20, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 4th day of January 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–374 Filed 1–7–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of Information Collection: Instructions and Model CFC Application

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. The model Combined Federal Campaign application and instructions is used to collect information from charitable organizations applying for eligibility.

We estimate 1400 applications are completed annually. Each form takes approximately 3 hours to complete. The annual estimate burden is 4200 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, or E-mail to mbtoomey@opm.gov.

Comments on this proposal should be received within 10 calendar days from the date of this publication

ADDRESSES: Send or deliver comments to:

Jennifer M. Hirschmann Office of Extragovernmental Affairs CFC Operations US Office of Personnel Management 1900 ''E'' Street, NW, Room 5450 Washington, DC 20415

And

Joseph Lackey OPM Desk Officer Office of Information and Regulatory Affairs Office of Management and Budget New Executive Office Building, NW Room 10235 Washington, DC 20503

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–433 Filed 1–7–99; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Extension

Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a)(17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 283 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 140,090 annual burden hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Techology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: December 29, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–415 Filed 1–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23632; No. 812–11370]

Navellier Variable Insurance Series Fund, Inc., et al.; Notice of Application

December 31, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of the Navellier Variable Insurance Series Fund, Inc.

(''Fund'') and shares of any other investment company that is designed to fund variable insurance products and for which Navellier & Associates, Inc. (''Adviser''), or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund, together with such other investment companies, the ''Insurance Products Funds'') to be sold to and held by: (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); (b) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); and (c) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

APPLICANTS: Navellier Variable Insurance Series Fund, Inc. and Navellier & Associates, Inc.

FILING DATE: The application was filed on October 23, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC order 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 January 25, 1999, 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. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., Post Road East, Westport, Connecticut 06880, Attention: Raymond A. O'Hara, III, Esq.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (202–942–8090).

Applicant's Representations

1. The Fund is a Maryland corporation that is registered under the 1940 Act as an open-end management investment company. The Fund currently consists of one series. The Fund may in the future issue shares of additional series.

2. The Adviser, a Nevada corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund. The Adviser is owned and controlled by its sole shareholder, Louis G. Navellier.

3. Shares of the Fund will be offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified singe premium and flexible premium contracts) (collectively, ''Variable Contracts''). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling any conditions set forth in the application. Each Participating Insurance Company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

5. Applicants state the shares of the Insurance Products Funds also may be offered directly to Qualified Plans outside of the separate account content, including without limitation, those trusts, plans, account or annuities described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k) and 501(c)(18) of the Internal Revenue Code 1986, as amended (''Code''), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation Section 1.817.5(f)(3)(iii). Shares of the Insurance of Products Funds sold to Qualified Plans will be held, where applicable by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA'').

6. The Plans may choose one or more Insurance Products Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Insurance Products Funds.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act providing exemptions from Sections–9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) (''shared funding''); (c) qualified pension and retirement plans outside the separate account context; and (d) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer there shares *exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company (mixed funding).

3. The relief granted by Rule 6e–2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding

variable contracts of one or more unaffiliated life insurance companies (shared funding). Furthermore, because the relief under Rule 6e–(b)(15) is available only where share of the investment company are offered exclusively to separate accounts, exemptive relief is necessary if the shares of the Insurance Products Funds also are to be sold to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions form Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares *exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for a flexible premium variable life insurance account under certain circumstances, but does not permit shared funding.

5. In addition, because the relief under Rule 6e–3(T)(b)(15) is available only where shares of the investment company are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Insurance Products Funds also are to be sold to Qualified Plans.

6. Applicants state that current tax law permits the Insurance Products Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held by the portfolios of the Insurance Products Funds. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. Section 1.817–5) which establish diversification requirements for the investment portfolios underlying variable annuity and variable life contract. The regulations provide that in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the regulations also contain certain exceptions to this requirement, one of which allow shares in an investment company to be held by the trustee of a ''qualified pension or retirement plan'' as defined by Revenue Ruling 94–62, without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. Section 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of the Treasury regulations, which made it possible for shares of an investment company to be held by a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, Applicants assert that, given the then current tax law, the sale of shares of the same investment company to separate accounts and Plans would not have been envisioned at the time of the adoption of Rules 6e–2(b) (15) and 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered open-end investment company if an affiliated person or that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that *directly* participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary to apply the provisions of Section 9(a) of the 1940 Act to the many individuals who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for variable annuity and variable life insurance contracts. Applicants state that the Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Products Funds. Thus, Applicants state that applying the restrictions of Section 9(a) to the thousands of individuals employed by the Participating Insurance Companies would serve no regulatory purpose, would increase monitoring costs incurred by Participating Insurance Companies, and therefore would reduce the net rates of return realized by Variable Contract owners.

10. Applicants submit that the reasons underlying the Commission's grant of relief from Section 9(a) will not be affected in any way by the proposed sale of the Insurance Products Funds to Qualified Plans. Applicants state that the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act remains in place. Applicants further submit that since Qualified Plans are not investment companies and will not deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are satisfied.

12. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser when an insurance regulatory authority so requires. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment

company's investment policies, principal underwriter or investment adviser. Under the rules, voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that such changes would: (a) violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investment that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) the adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

13. As indicated above, shares of the Insurance Products Funds sold to Qualified Plans will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the assets of the Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

14. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Plans are not entitled to pass-through voting privileges.

15. Applicants state that even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding.

16. Where a Plan provides participants with the right to give voting instructions, Applicants state that the purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants state that there is no contractual or other relationship between the Participating Insurance Companies, and any Qualified Plans which, for example, would affect the solvency of the life insurers, affect the performance of the life insurer's contractual obligations, or would be expected to increase the risks undertaken by the life insurer. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of irreconcilable material conflicts with respect to voting is not present with respect to any of the Qualified Plans.

18. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants assert, however, that this possibility is not different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

19. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

20. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owners as a result of such withdrawal.

21. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. The Insurance Products Funds will not be managed to

favor or disfavor any particular insurer or type of insurance product. Regardless of the types of Insurance Products Fund shareholders, a Fund's adviser is legally obligated to manage the Fund in accordance with the Fund's investment objectives, policies and restrictions as well as any guidelines established by the Fund's board.

22. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, mixed and shared funding also will facilitate the establishment of additional series of Insurance Products Funds serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life contracts held in the portfolios of management investment companies. Treasury Regulation Section 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

24. Applicants do not see any greater potential for irreconcilable material conflicts arising between the interests of Plan participants under the Qualified Plans and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these differences do not raise any conflicts of interest. When distributions are to be made, and a separate account of the Participating Insurance Company or Qualified Plan is unable to net purchase payments to make distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

25. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. ''Senior security'' is defined under the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants submit that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. State insurance commissioners have been given the veto power to prevent, among other things, insurance companies indiscriminately redeeming their separate accounts out of one fund and into another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of (or Plan participants in) Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Variable Contract owners and the interests of participants in Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

27. Applicants state that various factors have hindered insurance companies from offering variable annuity and variable life insurance contracts. Applicants submit that mixed and shared funding should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the sub-advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new series more feasible. Applicants assert that therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges to investors. Applicants further note that the sale of shares of the Insurance Products Funds to Plans also can be expected to increase the amount of assets available for investment by the Insurance Products Funds and thus promote economies of scale and greater diversification.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a ''Board'') shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Products Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether segregation should be implemented to a vote of all affected Variable Contact owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially affected by the material irreconcilable conflict vote to decline such offer. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if: (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. Participants will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission

continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Product Fund held in its separate account for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners, the Adviser (or any of its affiliates) will vote its shares of any series of any Insurance Products Fund in the same proportion as all Variable Contract owners having voting rights with respect to that series; provided, however, that the Adviser (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Insurance Products Fund and the interests of Qualified Plans investing in the Insurance Products Fund to conflict; and (c) the Board will monitor the Insurance Products Fund for any material conflicts and determine what action, if any, should be taken.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings or comply with Section 16(c) of the 1940 Act (although none of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 or 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or proposed Rule 6e–3 as adopted, to the extent such rules are applicable.

13. The Participants, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participants under the agreements governing their participation in the Insurance Products Funds.

14. If a Qualified Plan or Plan participant shareholder should become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with such Fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan or Plan participant will execute an application containing an acknowledgement of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–352 Filed 1–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23630; 812–11416]

The Sessions Group, et al.; Notice of Application

December 31, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and assume identified liabilities of certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act. *Applicants:* The Sessions Group (''Sessions''), Governor Funds (''Governor''), Keystone Financial, Inc. (''Keystone''), Governor Group Advisors, Inc. (''GGA''), and

Martindale Andres & Company, Inc. (''Martindale Andres'').

FILING DATES: The application was filed on November 23, 1998. 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 January 26, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities & Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 3435 Stelzer Road, Columbus, Ohio 43219.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

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, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Governor, a Delaware business trust, is registered under the Act as an open-end management investment company. Governor will initially offer shares of 12 series, four of which, Established Growth Fund, Intermediate Term Income Fund, Aggressive Growth Fund, and Emerging Growth Fund, are the ''Acquiring Series.'' [1]

2. Sessions, an Ohio business trust, is registered under the Act as an open-end management investment company. Sessions currently offers 8 series, four of which, KeyPremier Established Growth Fund, KeyPremier Intermediate Term Income Fund, KeyPremier Aggressive Growth Fund, and KeyPremier Emerging Growth Fund, are the ''Acquired Series.''

3. GGA, a Pennsylvania corporation, is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is investment adviser for the Acquiring Series. Martindale Andres, a Pennsylvania corporation, is registered under the Advisers Act and is currently investment adviser for the Acquired Series. Martindale Andres has been retained to serve as sub-adviser for the Acquiring Series. Both GGA and Martindale Andres are wholly-owned subsidiaries of Keystone, a bank holding and financial services company organized as a Pennsylvania corporation. A defined benefit plan maintained for the benefit of the employees of Keystone (the ''Keystone Plan''), owns 5% or more of the outstanding voting securities of each of the Acquired Series.[2]

4. On August 13, 1998, the board of trustees of the Acquired Series (the ''Sessions Board''), and on October 5, 1998, the board of trustees of the Acquiring Series (the ''Governor Board'', together with the Sessions Board, the ''Boards''), including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Independent Trustees''), approved an Agreement and Plan or Reorganization (the ''Agreement''). Under the Agreement, on the date of the exchange (the ''Exchange Date''), which is currently anticipated to be January 30, 1999, the Acquiring Series will acquire all of the assets and identified liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Series at 4:00 p.m. EST on the day before the Exchange Date (the ''Valuation Time''), followed by the liquidation and dissolution of the corresponding Acquired Series and the pro rata distribution to the shareholders of the Acquired Series of shares of the corresponding Acquiring Series (the ''Reorganization''). Because the Acquiring Series are newly formed and will have no assets or liabilities as of the Valuation Time, the NAV per share of the applicable Acquiring Series will be set initially to equal the NAV per share of the corresponding Acquired Series as of the Valuation Time.[3]

5. Applicants state that the investment objectives, policies and restrictions of the Acquiring Series are identical or substantially identical to those of the Acquired Series. Each Acquired Series currently has a single class of shares that is subject, with certain exceptions, to a front-end sales charge. The Acquiring Series have a single class of shares that is subject to an identical sales charge and exceptions. No sales charge will be incurred by shareholders of the Acquired Series in connection with their acquisition of shares of the Acquiring Series. BISYS Fund Services, LP, the Acquired Series' principal underwriter and distributor, will be responsible for all fees and expenses related to the Reorganization.

6. The Board, including the Independent Trustees, determined that the Reorganization is in the best interests of the shareholders of the Acquired Series and the Acquiring Series, and that the interests of the shareholders of the Acquired Series and the Acquiring Series would not be diluted by the Reorganization. In assessing the Reorganization, the factors considered by the Boards included, among others (a) the business objectives and purposes of the Reorganization, (b) the investment objectives and purposes of the Reorganization, (c) the terms and conditions of the Agreement, including the allocation of expenses of the Reorganization, (d) the tax-free nature of the Reorganization, and (e) the expense ratios of the Acquiring Series and the corresponding Acquired Series.

7. The Reorganization is subject to a number of conditions precedent, including that: (a) definitive proxy solicitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series; (b) the shareholders of the Acquired Series approve the Agreement; (c) the Acquiring and Acquired Series receive an opinion of tax counsel that the proposed Reorganization will be tax-free for each Series and its shareholders; and (d) applicants will receive from the Commission an exemption from section 17(a) of the Act for the Reorganization. The plan may be terminated and the Reorganization abandoned at any time by mutual consent of the respective Boards of the Acquired Series and the

[1] The other series are not part of the relief sought in the application.

[2] The Keystone Plan owns approximately 11% of KeyPremier Established Growth Fund, 11% of KeyPremier Intermediate Term Income Fund, 15% of KeyPremier Aggressive Growth Fund, and 68% of KeyPremier Emerging Growth Fund.

[3] The Acquiring Series and the Acquired Series correspond with one another as follows: Governor's Established Growth Fund corresponds to Sessions' Key Premier Established Growth Fund; Governor's Intermediate Term Income Fund corresponds to Sessions' KeyPremier Intermediate Term Income Fund; Governor's Aggressive Growth Fund corresponds to Sessions' KeyPremier Aggressive Growth Fund; and Governor's Emerging Growth Fund corresponds to Sessions' KeyPremier Emerging Growth Fund.

Acquiring Series. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

8. Definitive proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series on or about December 4, 1998. A special meeting of shareholders is scheduled for January 15, 1999.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person 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. Applicants state that the Acquiring and Acquired Series may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Acquiring and Acquired Series may be deemed to be affiliated by reason other than having a common investment adviser, common directors, and/or common officers. Keystone might be deemed to have an indirect pecuniary interest in the performance of the assets held by the Keystone Plan. Because the Keystone Plan owns 5% or more of the outstanding voting securities of each of the Acquired Series, each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants believe that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the relative NAVs of the Acquiring and Acquired Series' shares. Applicants also state that the Acquiring Series were created for the express purpose of acquiring the assets and liabilities of the corresponding Acquired Series, and that their investment objectives, policies and restrictions were established to be substantially identical to those of the corresponding Acquired Series. In addition, applicants state that the Boards, including a majority of the Independent Trustees, have made the requisite determinations that the participation of the Acquiring and Acquired Series in the proposed Reorganization is in the best interests of each Series and that such participation will not dilute the interests of shareholders of the Series.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–353 Filed 1–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40873; File No. SR–CHX–98–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by The Chicago Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Exchange's Arbitration Rules

December 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 on December 30, 1998 to request accelerated approval.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 23 and 24 of Article VII to exclude, from the CHX arbitration forum, claims of employment discrimination, including sexual harassment, in violation of a statute unless the parties involved have agreed to arbitrate the claim after it has arisen.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] December 30, 1998 letter from Kirsten M. Carlson, Foley & Lardner (counsel for the Exchange), to Katherine A. England, Assistant Director, Market Regulation, SEC.

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

Purpose

The purpose of the proposed rule change is twofold. First the rule change would exclude any claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute [4] from the requirement that all disputes between a nominee or other associated person and a member or member organization arising out of Exchange business be arbitrated, except where the parties agree to arbitrate the claim after it has arisen. (Article VIII, Rule 23.) Second, the rule change would amend the Exchange's general arbitration rules to provide that any claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for submission to arbitration only where the parties have agreed to arbitrate the claim after it has arisen. (Article VIII, Rule 24.)

Background

Exchange Rule 23 of Article VIII requires that any disputes between a nominee or other associated person and a member or member organization arising out of Exchange business be settled by arbitration. In order to become an associated person, an individual is required to sign and file with the Exchange a Form U–4 (Uniform application for Securities Registration or Transfer). Form U–4 requires persons to submit to arbitration any claim that is required to be arbitrated under the rules of the self-regulatory organizations with which they register.

In 1994, the General Accounting Office (''GAO'') conducted a study on the arbitration of employment discrimination disputes in the securities industry.[5] While the GAO report did not address the adequacy of arbitration as a means of resolving employment discrimination disputes, it made several recommendations for improving the arbitration process. The recommendations included specialized training of arbitrators in discrimination law and the appointment of more women and minorities as arbitrators.

Despite steps to improve the process, associated persons and others continue to oppose mandatory arbitration of discrimination claims pursuant to the Form U–4 and other pre-dispute agreements. In July 1997, the U.S. Equal Employment Opportunity Commission (''EEOC'') issued a policy statement that mandatory pre-dispute agreements to arbitrate statutory discrimination claims are inconsistent with the purpose of the federal civil rights laws.[6]

Two federal court cases decided in 1998 support the EEOC's position. In January 1998, a Massachusetts district court in *Rosenberg* v. *Merrill Lynch*, 76 FEP 681 (D. Mass. 1998), declined to compel arbitration in plaintiff's Title VII and the Age Discrimination in Employment Act (''ADEA'') claims pursuant to the agreement to arbitrate contained in the Form U–4 plaintiff was required to sign as a condition of her employment. In May 1998, the Court of Appeals for the Ninth Circuit held, in *Duffield* v. *Robertson Stephens & Company*, 144 F.3d 1182 (9th Cir. 1998), cert. denied, (U.S. Nov. 9, 1998) (No. 98–237), that employers could not compel employees to waive their right to a judicial forum under Title VII, and therefore plaintiff could not be compelled to arbitrate her statutory discrimination claims pursuant to form U–4. Prior to these decisions, federal courts had consistently upheld the arbitration of employment discrimination claims pursuant to the Form U–4.

On October 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'') submitted to the Commission, a proposed rule change to remove the requirement from its rules that registered representatives must arbitrate statutory employment discrimination claims.[7] Under the NASD's proposal, an employee could file such a claim in court unless he was obligated to arbitrate pursuant to a separate agreement entered into either before or after the dispute arose.[8] The Commission's order approving the NASD's changes stated that the NASD intends to make changes to its arbitration program to make arbitration more attractive to parties for the resolution of discrimination claims.[9]

The Exchange's proposal will create an exception to the Exchange rule that requires arbitration of all claims of nominees and other associated persons arising out of Exchange business for claims alleging employment discrimination, including any sexual harassment claim.

In addition, the Exchange is going further by proposing rule amendments under which statutory discrimination claims will not be eligible for arbitration pursuant to any pre-dispute agreement to arbitrate. This action brings the Exchange's arbitration policy into conformity with the EEOC's ''Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment.'' [10]

In its December 1997 comment letter to the SEC regarding the NASD proposal, the EEOC reiterated its position ''that *pre*—dispute arbitration agreements, particularly those that mandate binding arbitration of discrimination claims as a condition of employment, are contrary to the fundamental principles reflected in this nation's employment discrimination laws. We recommend therefore, that the proposed rule be revised to permit arbitration of statutory employment discrimination claims only under *post*-dispute arbitration agreements.'' [11]

The Exchange's proposed amendments will limit the availability of the Exchange's forum for the resolution of employment discrimination claims that otherwise meet the Exchange's arbitration requirements to those cases where the parties have agreed to arbitrate the claim after it has arisen, as recommended by the EEOC.

The Exchange is also proposing to amend Rule 24 which requires the arbitration of disputes between customers or non-members and members or member organizations, pursuant to any written agreement to arbitrate or upon the demand of the customer or non-member. The rule change adds paragraph (d) to provide that claims alleging employment discrimination, including any sexual harassment claim, shall be eligible for submission to arbitration only where the

[4] Claims ''in violation of a statute'' are not limited to the federal civil rights laws and include all federal, state and local anti-discrimination statutes.

[5] *Employment Discrimination: How Registered Representative Fare in Discrimination Disputes* (GAO/HEHS–94–17, March 30, 1994).

[6] EEOC Notice No. 915.002, July 10, 1977.

[7] Exchange Act Release No. 39421 (December 10, 1997).

[8] On September 15, 1998, the New York Stock Exchange, Inc, (''NYSE'') submitted to the SEC a proposed rule change to exclude from mandatory arbitration disputes between registered representatives and members or member organizations and between employees and members or member organizations relating to employment discrimination, including sexual harassment claims. Unlike the NASD rule, however, the NYSE proposed rule would only permit an agreement to arbitrate entered into after the dispute arose to be binding. The Commission approved the NYSE proposal on December 29, 1998. (*See* Exchange Act Release No. 40858, December 29, 1998).

[9] Exchange Act Release No. 40109, June 22, 1998.

[10] EEOC Notice No. 915.002, July 10, 1997.

[11] Letter of Gilbert F. Casellas, Chairman, EEOC, to Jonathan G. Katz, Secretary, SEC, Re: NASD Proposed Rule Change on Arbitration of Employment Discrimination Claims, December 1997.

parties have agreed to arbitrate the claim after it has arisen. This amendment excludes from Exchange arbitration statutory employment discrimination claims of non-registered employees (or other persons that may not be deemed to be an associated person) pursuant to pre-dispute arbitration agreements.

The EEOC and several members of Congress have endorsed arbitration as an effective means of resolving discrimination claims, provided the parties agree to arbitrate after the claim has arisen. The Exchange's proposed amendment provides a forum for those employees who choose post-dispute to resolve their statutory employment discrimination claims through arbitration.

Some employment disputes may contain both contract or tort claims as well as statutory employment discrimination claims. Under amended Rule 23 (and Rule 24 for non-registered employees who have executed pre-dispute arbitration agreements) these cases may be bifurcated. The employment discrimination claims will be heard in a forum other than the exchange, such as court, while any claims subject to arbitration may continue to be heard at the Exchange.[12] The parties may avoid bifurcation by agreeing to proceed with all claims in a single forum. Given a choice, after a dispute has arisen, employees in many instances believe that arbitration is preferable to protracted and expensive litigation and will willingly make that choice.[13]

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, 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.

[12] The bifurcation of securities industry claims is not unprecedented. Before the Supreme Court's decision in *Shearson* v. *McMahon*, 482 U.S. 220 (1987) (holding that claims under the Securities Exchange Act of 1934 could be compelled to arbitration), the Supreme Court decided *Dean Witter Reynolds, Inc.* v. *Byrd*, 105 S. Ct. 1238 (1985). In *Byrd*, the dispute involved allegations of federal securities laws violations and pendent state law claims. The Court compelled the state law claims to arbitration and held that the federal securities laws claims could be heard in court.

[13] *See Duffield* v. *Robertson Stephens & Company*, 144 F.3d 1182 (9th Cir. 1998), cert. denied, (U.S. Nov. 9, 1998) (No. 98–237).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Further, the Exchange is requesting accelerated approval of the proposed rule change pursuant to section 19(b)(2) so that it may become effective on or shortly after January 1, 1999, on which date the NYSE proposal discussed above becomes effective. The Commission notes that the proposal is virtually identical to an NYSE proposal the Commission has already approved, one that was subject to the full comment period.[14] It is expected that in the near future other self-regulatory organizations (''SROs'') will adopt similar rules or issue interpretive releases to provide uniformity throughout the securities industry. To prevent forum shopping among SROs and to prevent prospective plaintiffs from being disadvantaged by any inconsistency in the effective dates of SROs' rule changes or interpretative releases, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–29 and should be submitted by January 29, 1999.

[14] *See* footnote 8 above.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[15] that the proposal, SR–CHX–98–29, and amendment No. 1 thereto be and hereby is approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–412 Filed 1–7–99; 8:45 am]

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[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40878; File No. SR–NASD–98–51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 To Be Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiatives-Amendments to NASD Rules 6530 and 6540

January 4, 1999.

I. Introduction

On October 7, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] proposed amendments to NASD Rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

6530 and 6540 to limit quotations on the OTC Bulletin Board® (''OTCBB'') to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings, respectively.

The proposed rule change, including Amendment No. 1, appeared in the **Federal Register** on November 4, 1998.[3] The Commission received three comments concerning the proposed rule change.[4] This order approves the proposed rule change, as amended.

II. Description of Proposal

The NASD has actively studied the OTC market in an effort to address abuses in the trading and sales of thinly traded, thinly capitalized (microcap) securities. These securities are not listed on Nasdaq or any exchange and trade on the OTCBB, in the ''pink sheets'' published by the National Quotation Bureau, Inc. (''Pink Sheets''), and in other quotation media where there are no listing requirements. With respect to its examation of the OTCBB in particular, the NASD noted the lack of reliable and current financial information about the issuers, and the perception by the public that the OTCBB is similar to a highly regulated market, such as the registered exchanges or Nasdaq.[5]

The OTCBB provides a real-time quotation medium that NASD member firms can use to enter, update, and retrieve quotation information (including unpriced indications of interest) for equity securities traded over-the-counter that are neither listed on Nasdaq nor on a primary national securities exchange. Eligible securites include national, regional, and foreign equity issues, warrants, units, Direct Participation Programs (''DPPs'')[6] and American Depositary Receipts (''ADRs'')[7] not listed on any other U.S. national securities market or exchange. Unlike Nasdaq or registered exchanges where individual companies apply for listing on the market—and must meet and maintain strick listing standards—there are no listing standards for the OTCBB, and there currently is no requirement that issuers of securities on the OTCBB make current, publicly-available reports with the SEC or other regulator. In fact, over half of the companies that are currently quoted on the OTCBB are not subject to any public reporting requirements.

The proposed rule change was developed in an effort to balance the benefits that the transparency of the OTCBB provides with the public need for information about the issuers being quoted. The NASD is concerned that where there is no public information available regarding a security, the broad-based automated display of quotations in that security creates an unjustied perception of reliability. While the NASD realizes that the new rule may result in the lack of real-time quotations for those securities that become ineligible for the OTCBB, it believes that this loss is outweighted by the benefit to investors who would, under the proposed rule, have access to information about the companies in which they may invest. In addition, transactions in securities ineligible for the OTCBB would still be subject to real-time last sale trade reporting. These reports are publicly disseminated through market data vendors on a real-time basis.

Amendment to Rule 6530

This proposed amendment to Rule 6530 would limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to Sections 13[8] and 15(d) of the Act,[9] securities of depository institutions that are not required to make filings under the Act, but file publicly-available reports with the appropriate regulatory agencies, registered closed-end investment companies, and insurance companies that are exempt from registration under Section 12(g)(2)(G) of the Act.[10]

To remain eligible for quotation on the OTCBB, an issuer must remain current in its filings with the SEC or applicable regulatory authority. A member would be required to inform the NASD of the issuer's reporting schedule. Based upon that schedule, the NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed.[11] The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to market makers and investors through the OTCBB web site at http://www.otcbb.com. Once an issuer is delinquent in filing a required report (*e.g.*, Form 10–K, Form 10–Q, Form 20–F, Insurance Company Annual Statement, or call report), a security of the issuer may continue to be quoted on the OTCBB for a 30 or 60 calendar day grace period from the due date of the report, depending on the type of issuer. After the grace period, quotations in the security of the delinquent issuer would not be permitted on the OTCBB.

Filings for most OTCBB issuers are available through the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[12] Foreign issuers are generally permitted to file in paper format and copies of these filings are available from the Commission. Exchange Act filings of banks and thrifts are available upon filing from the financial institution's primary bank regulatory agency. The grace period for these issuers is 30 days. In the case of banks and thrifts that are not required to make Exchange Act filings, members can obtain call report information from the National Information Center of Banking Information website (http://www.ffiec.gov/nic) or the Federal Deposit Insurance Corporation's website (http://www.fdic.gov). Call reports are filed 30 days after the end of each calendar quarter and are available to the public within 15 days of filing. Insurance companies file annual statements with the National Association of Insurance Commissioners (''NAIC'') by March 1 of each year. This information is released to the public by NAIC by April 1. Because of the delay in the availability of call reports and insurance company annual statements, the proposed rule permits a 60 calendar day grace period for the quotation of securities of these companies after the

[3] Securities Exchange Act Rel. No. 40606 (October 27, 1998), 63 FR 59610.

[4] Electronic comment letters from Edward Zorek, Tai Jim, and R. Jeffrey Bacon were received by the Commission at rule-comments@sec.gov on November 11, 1998, November 28, 1998, and November 29, 1998, respectively. The substance of the comments received is discussed in Section III. *Summary of Comments.*

[5] In addition, the NASD has filed a proposed rule change through its subsidiary, NASD Regulation, to require a member to review current financial statements and other business information about the issuer of a security that is not listed on Nasdaq or a national securities exchange before that member could recommend a transaction to a customer in the security and to provide certain disclosure information on the trade confirmation for all customer transactions (solicited and unsolicited) in such securities. *See* SR–NASD–98–50.

[6] DPP's are securities offerings that permit investors to directly participate in the cash flow and tax consequences of the underlying investments. DPPs provide for the ''flow through'' of tax results. Thus, gains and losses are taxed to the investor not the issuer of the security.

[7] ADRs are receipts for shares of foreign corporations that are held by U.S. banks and bought and sold in the U.S. by investors, without utilizing overseas markets.

[8] 15 U.S.C. 78m.

[9] 15 U.S.C. 78*o*–(d).

[10] 15 U.S.C. 78*l*(g)(2)(G).

[11] It is contemplated that the modifier will be affixed one to two days after the report is due.

[12] EDGAR is the SEC's system for the receipt, acceptance, and review of documents submitted in electronic format.

deadline for the issuer to submit a report to the appropriate regulator.

Amendment to Rule 6540

This proposed amendment to Rule 6540 would prohibit member firms from quoting an issuer's security if the issuer has not made current reports with the SEC or the appropriate regulatory authority. Members must also provide such reports to the NASD, although the reports may be provided by any market maker in the security. The NASD is exploring ways to reduce the burden of this requirement for members, particularly with respect to issuers who are EDGAR filers. As discussed above, the NASD will affix a modifier to the security's symbol if the NASD has not received information that the report was timely filed. This indication will provide members with notice that the NASD has not received information that the issuer's report was timely filed. Once the NASD provides this notice, the member will have the opportunity to acquire the necessary report and provide it to the NASD before the end of the grace period.

Phase-In

The new requirements will be immediately effective upon approval of the rule for securities not previously quoted on the OTCBB. Securities quoted on the OTCBB on the date the rule becomes effective will be afforded at least six months to comply with the new requirements. Specifically, and in order to accommodate the resource demands that may be placed upon the SEC when certain issuers elect to file current public reports, the new requirements will be applied in a month-by-month staggered manner for a period from six to eighteen months from the date the rule is approved. The NASD will apply the new rule to approximately the same number of issuers for each month during that period in order to evenly distribute the SEC's anticipated work load. The delayed effectiveness of the rule should also enable market makers, investors, and issuers to take appropriate action. It should be noted that for issuers who file a Form 10 or Form 10SB with the SEC to register under Section 12(g) of the Act,[13] all SEC comments, if any, must be cleared with the SEC before securities can be quoted on the OTCBB.

III. Summary of Comments

The Commission received three comments on the proposed amendments.[14] All three commenters supported the proposal; noting that the proposed amendments should help to reduce fraud in OTCBB traded securities.

IV. Discussion

The Commission believes that the proposal is consistent with Section 15A of the Act[15] as it will protect investors and the public interest by requiring issuers listed on the OTCBB to file reports containing current financial information with the Commission or appropriate regulatory agency. Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) and (11) of the Act.[16] Section 15A(b)(6) requires, among other things, that the association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[17] Section 15A(b)(11) requires that the rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.[18]

Under proposed Rule 6530, market makers will not be permitted to quote OTCBB traded securities unless the issuer has made current filings with the appropriate regulatory agency. The filing requirement ensures that companies trading on the OTCBB market will have current, public information that investors can access, from the appropriate regulatory agency, when considering whether to invest in an OTCBB traded security. Proposed Rule 6530 should provide investors in OTCBB securities with more information on which to base investment decisions. The Commission also believes that limiting quotations on the OTCBB to the securities of issuers that report to the SEC or applicable regulatory authority may help to reduce fraud and manipulation. As a result of the reporting requirement, financial data on issuers will be available and issuers that provide false or misleading information in their required filings may be subject to liability for making those statements.[19] The Commission finds that proposed Rule 6530 is consistent with the Act because it will protect investors and the public interest.[20]

Proposed Rule 6530 provides that domestic securities that were previously trading on the OTCBB will not be subject to the proposal until six months after the approval date. Neither foreign issuers nor issuers of securities not currently trading on the OTCBB will be able to take advantage of the phase-in provision; these issuers will be obligated to immediately comply with Rule 6530, as amended. The Commission believes that the phase-in period is reasonable and consistent with the Act. The Commission believes that the phase-in period for issuers of domestic securities that were previously trading on the OTCBB will provide these issuers with ample notice of the rule change and adequate time to comply with the new rules' requirements. Regarding issuers of domestic securities not currently quoted on the OTCBB and foreign securities, the Commission believes it is consistent with the Act and in the public interest that they be required to comply with the amendments to Rule 6530 effective immediately. The Commission finds that the phase-in period for issuers previously quoted on the OTCBB and immediate effectiveness of the amendments to Rule 6530 with respect to other issuers is reasonable, and consistent with Section 15A(b)(6) of the Act.[21]

Proposed amendments to Rule 6540 will permit NASD members to quote only the securities of issuers that satisfy the requirements of proposed Rule 6530. As proposed, Rule 6540 will also necessitate that NASD members provide the NASD copies of reports filed with the Commission or other applicable regulatory authority. These reports can be provided by any market maker in the security to the NASD. Once a market maker has properly filed all necessary reports with the NASD, all market makers in the security may quote the security, as long as the reports remain current. The Commission believes that the rule should ensure that market makers have current financial information available to them regarding issuers quoted on the OTCBB and enable NASD market makers to reflect this information in their quote. The Commission finds that proposed Rule 6540 is consistent with Section

[13] 15 U.S.C. 78*l*(g).

[14] *See supra* note 4.

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78*o*–3(b)(6) and (11).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78*o*–3(b)(11).

[19] *See, e.g., SEC* v. *Savoy Industries, Inc.*, 587 F.2d 1149 (D.C. Cir. 1978), *cert denied*, 440 U.S. 913 (1979); Exchange Act Rule 10b–5, 17 CFR 240.10b–5.

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 15 U.S.C. 78*o*–3(b)(6).

15A(b)(11) of the Act[22] in that it is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NASD–98–51) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–414 Filed 1–7–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40874; File No. SR–NASD–98–88]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing and Continued Listing Determinations

December 31, 1998.

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 27, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, The Nasdaq Stock Market Inc. (''Nasdaq''), filed a proposed rule change with the Securities and Exchange Commission (''Commission'') relating to issuer listing and continued listing determinations. The NASD amended this proposal on December 15, 1998.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[22] 15 U.S.C. 78*o*–3(b)(11).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 15, 1998.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is filing with the Commission a proposed rule change that would replace the existing Rule 4800 Series (Rules 4810 through 4890) with a new code of procedure for review of Nasdaq listing determinations. The proposal also would temporarily relocate the existing Rule 4800 Series, to the extent it relates to other grievances concerning the Association's automated systems, to the Rule 9700 Series.[4] Below is the text of the proposed rule change. New language is *italicized* and deletions are [bracketed].

4480. Termination Procedure.

(a) Failure to maintain compliance with the provisions of Rules 4450, 4460, or 4470 will result in the termination of an issue's designation unless an exception is granted as provided in [this] *the* Rule [4480] 4800 Series. Termination shall become effective in accordance with the terms of the notice by Nasdaq.

(b) [An issuer that is subject to termination of its designation may request a review by a Panel authorized to hear appeals. If a review is requested, the issuer is entitled to submit materials and arguments in connection with such review.

(c) The Panel may grant or deny continued designation on the basis of the written submission by the issuer and whatever other data it deems relevant.

(d) Determinations by the Panel may be appealed to the Nasdaq Listing and Hearing Review Committee by any aggrieved person. An appeal to the Nasdaq Listing and Hearing Review Committee shall not operate as a stay of the decision of the Panel unless the Nasdaq Listing and Hearing Review Committee in its discretion determines to grant such a stay.

(e) The Rule 4800 series sets forth procedures applicable to the review of the termination of an issuer's designation.

(f)] An issuer may voluntarily terminate its designation upon written notice to Nasdaq.

* * * * *

4530. Issuer Hearing Fee

Removed

* * * * *

[4800] *9700*. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS

[4810] *9710*. Purpose

The purpose of this Rule *9700* [4800] Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series [or], the Uniform Practice Code as set forth in the Rule 11000 Series, [and to provide procedures for the handling of qualification matters pursuant to The Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series] *or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.*

[4820] *9720*. Form of Application

No change

[4830] *9730*. Request for Hearing

No change

[4840] *9740*. Consideration of Applications

No change

[4850] *9750*. Decision

No change

[4860] *9760*. Review by the Nasdaq Listing and Hearing Review Council

No change

[4870] *9770*. Findings of the Nasdaq Listing and Hearing Review Council on Review

No change

[4880] *9780*. Discretionary Review by the Board

No change

[4890] *9790*. Application to Commission for Review

Any decision not appealed under Rule *9760* [4860] or called for review under Rule *9760* [4860] or Rule *9780* [4880] shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. In any case where a person feels aggrieved by any final action of the Association issued pursuant to Rule *9770* [4870] or Rule *9780* [4880], the person may make application for review to the Commission in accordance with the Act.

4800. PROCEDURES FOR REVIEW OF NASDAQ LISTING DETERMINATIONS

4810. Purpose and General Provisions

(a) The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq Stock Market based upon the Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, The Nasdaq Stock Market.

(b) An issuer may file a written request for an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a proceeding under the Rule 4800 Series. The Association may grant extensions or exceptions where it deems appropriate.

(c) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel (as defined in Rule 4830). Nasdaq Listing and Hearing Review Council (the ''Listing Council''), or the NASD Board of

[4] The Association intends this latter change as a temporary measure pending submission and approval of amendments to the Rule 9510 Series addressing these issues.

Governors (the ''NASD Board''), as part of its respective review, may request additional information from the issuer. The issuer will be afforded an opportunity to address the significance of the information requested.

(d) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or NASD Board, as part of its respective review, may consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information.

(e) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or NASD Board, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond. In this regard, the issuer may be subject to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in The Nasdaq Stock Market.

4815. Written Notice of Staff Determination

If the Listing Qualification Department or the Listing Investigations Department reaches a determination (the ''Staff Determination'') to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series.

4820. Request for Hearing

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with The Nasdaq Office of Listing Qualifications Hearings (the ''Hearings Department''). A request for a hearing will stay the delisting action pending the issuance of a written determination by a Listing Qualifications Panel. If no hearing is requested within the seven calendar day period, the Staff Determination will take immediate effect. All hearings will be held before a Listing Qualifications Panel as described in Rule 4830. All hearings will be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is field, at a location determined by the Hearings Department. The Hearings Department will make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer will be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Hearings Department stating the specific grounds for the issuer's contention that the Staff Determination was in error or requesting an extension of time to comply with the listing requirements or an exception to those requirements, as permitted by Rule 4810. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Staff Determination.

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to The Nasdaq Stock Market, Inc., to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of written submission from the issuer, $1,400; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, $2,300.

4830. The Listing Qualification Panel

(a) All hearings will be conducted before an independent panel (the ''Listing Qualifications Panel'') composed of at least two persons, not employees of the NASD or its subsidiaries, designated by the Nasdaq Board of Directors. No person shall serve as a Listing Qualifications Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter.

(b) Prior to the hearing, the Listing Qualifications Panel will review the written record, as defined in Rule 4870. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons. Hearings are generally scheduled to last one hour, but may be extended at the discretion of the Listing Qualifications Panel. The Listing Qualifications Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings will be kept. The record of proceedings before a Listing Qualifications Panel will be kept by the Hearings Department.

(c) After the hearing, the Listing Qualifications Panel will issue a written decision (the ''Panel Decision'') describing the specific grounds for the determination and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The Panel Decision will be promptly provided to the issuer and is effective immediately unless it specifies to the contrary. The Panel Decision will provide notice that the issuer may request review of the Panel Decision by the Nasdaq Listing and Hearing Review Council within 15 calendar days of the date of the Panel Decision and that the Panel Decision may be called for review by the Nasdaq Listing and Hearing Review Council within 45 calendar days from the date of the Panel Decision pursuant to Rule 4840.

4840. Review by the Nasdaq Listing and Hearing Review Council

(a) The Nasdaq Listing and Hearing Review Council (the ''Listing Council'') is a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-laws whose responsibilities include the consideration of determinations to limit or prohibit the listing of an issuer's securities.

(b) The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of General Counsel. The request will not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of $1,400 to The Nasdaq Stock Market, Inc. to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of General Counsel will make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

(c) The Listing Council may also consider any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The issuer will be promptly informed of the reasons for the review and will be provided a deadline to provide a written submission if the issuer wishes. The institution of discretionary review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. At the sole discretion of the Listing Council, the call for review of a Panel Decision may be withdrawn at any time prior to the issuance of a decision.

(d) The Listing Council will consider the written record and, at its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listings Council, is made. The Listing Council may also recommend that the NASD Board of Governors (''NASD Board'') consider the matter. The record of proceedings before the Listing Council will be kept by the Nasdaq Office of General Counsel.

(e) The Listing Council will issue a written decision (the ''Listing Council Decision'') that affirms, modifies, or reverses the Panel Decision or that refers the matter to Nasdaq staff or to the Listing Qualifications Panel for further consideration. The Listing Council Decision will describe the specific grounds for the decision, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that the NASD Board may call the Listing Council Decision for review at any time before its next meeting which is at least 15 calendar days following the issuance of the Listing Council Decision. The Listing Council Decision will be promptly provided to the issuer and will take immediate effect unless it specifies to the contrary.

4850. Discretionary Review by NASD Board

(a) A Listing Council Decision may be called for review by the NASD Board solely upon the request of one or more Governors not later than the next NASD Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review will be undertaken solely at the discretion of the NASD Board. The institution of discretionary review by the NASD Board will not operate as a stay of the decision, unless the call for review specifies to the contrary.

(b) If the NASD Board conducts a discretionary review, the review generally will be based on the written record considered by the Listing Council. However, the NASD Board may, at its discretion, request and consider additional information from the issuer and/or from Nasdaq staff. Should the Board consider additional information, the record of proceedings before the NASD Board will be kept by the Nasdaq Office of General Counsel.

(c) If the NASD Board conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The NASD Board may affirm, modify or revise the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or Nasdaq staff with appropriate instructions. This decision represents the final action of the Association and will take immediate effect unless it specifies to the contrary.

(d) If the NASD Board declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Listing Council Decision represents the final action of the Association.

4860. Application to the Commission for Review

Any issuer aggrieved by a final action of the Association may make application for review to the Commission in accordance with Section 19 of the Act.

4870. Record on Review

(a) Documents in the written record may consist of the following items, as applicable: correspondence between Nasdaq and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer or the Listing Qualifications Department or the Listing Investigations Department, including any written request for an extension or exception as permitted in Rule 4810(b) and any response thereto. Any additional information requested from the issuer by the Listing Qualifications Panel, Listing Council, or NASD Board as part of the review process will be included in the written record. The written record will be supplemented by the transcript of any hearings held during the review process and each decision issued. At each level of review under this Rule 4800 Series, the issuer will be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for issuer submissions, unless the issuer waives such production.

(b) In addition to the documents described in paragraph (a) above, if the issuer's bid price, market makers, or any information that the issuer releases to the public, is considered as permitted in Rule 4810, that information, and any written submission addressing the significance of that information, will be made part of the record.

(c) If additional issues arising under the Rule 4000 Series are considered, as permitted in Rule 4810, the notice of such consideration and any response to such notice will be made a part of the record.

4875. Document Retention Procedures

Any document submitted to the Association in connection with a Rule 4800 proceeding that is not made part of the record will be retained by the Association until the date upon which the Rule 4800 Series proceeding decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court.

4880. Delivery of Documents

Delivery of any document under this Rule 4800 Series by an issuer or by the Association may be made by hand delivery to the designated address, or by facsimile to the designated facsimile number and overnight courier to the designated address. Delivery will be considered timely if hand delivered prior to the relevant deadline or upon being faxed and/or sent by overnight courier service prior to the relevant deadline. If an issuer has not specified a facsimile number or address, delivery will be made to the last known facsimile number and address. If an issuer is represented by counsel or a representative, delivery will be made to the counsel or representative.

4885. Computation of Time

In computing any period of time under the Rule 4800 Series, the day of the act, event, or default from which the period of time begins to run is not to be included. The last day of the period so computed is included, unless it is a Saturday, Sunday, federal holiday, or NASD holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or NASD holiday.

4890. Prohibited Communications

(a) Unless on notice and opportunity for the appropriate Nasdaq staff and the issuer to participate, a representative of the Association involved in reaching a Staff Determination, an issuer, or counsel to or representative of an issuer, shall not make or knowingly cause to be made a communication relevant to the merits of a proceeding under this Rule 4800 Series (a ''Prohibited Communication'') to any Listing Qualifications Panel member, Listing Council member, Governor of the NASD Board, or Association employee who is participating in or advising in the decision in that proceeding.

(b) Listing Qualifications Panel members, Listing Council members, Governors of the NASD Board and Association employees who are participating in or advising in the decision in a proceeding under this Rule 4800 Series, shall not make or knowingly cause to be made a Prohibited Communication to an issuer, counsel to or representative of an issuer, or a representative of the Association involved in reaching a Staff Determination.

(c) If a Prohibited Communication is made, received, or caused to be made, the Association will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. The Association will permit Nasdaq staff or the issuer, as applicable, to respond to the Prohibited Communication, and will place any response in the record of the proceeding.

(d) If the issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, that submission will constitute a waiver of any claim that Association communications relating to the proposal were Prohibited Communications.

4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

(a) No change.

(b) [Should Nasdaq] *If the Association* determines *to suspend or terminate* [that] a security's inclusion [shall be suspended or terminated] because of [its] noncompliance with the provisions of *this* Rule *4000 Series* [4310 or Rule 4320 or by the operation of paragraph (a)(1), (2) or (3) of this Rule, Nasdaq], *the Association will* [shall so] notify the issuer prior to suspension or termination or as soon as practicable thereafter. *This notification constitutes a Staff Determination for purposes of Rule 4815 and the issuer may request review of the decision under the Rule 4800 Series.*

(c)–(f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 NASD is proposing to replace its existing rules relating to listing matters.[5]

[5] The Association's proposal temporarily relocates the existing Rule 4800 Series relating to

These changes follow changes made by the NASD in 1997 to the Rules of the Association relating to other grievances concerning the automated systems. Many of the procedures set forth in the proposed code of listings procedures (''Proposed Listings Code'') are already used by Nasdaq in practice, and issuers are informed of these procedures in correspondence. The Proposed Listings Code codifies these procedures. In addition, it provides issuers with much greater detail about the review process and adds a number of procedures, including those for the maintenance of the record on review, procedures for the delivery of documents, and prohibitions on communications outside of the official proceeding.

Section 4810 of the Proposed Listings Code describes the purpose of the new Rule 4800 Series and certain general provisions. The proposed Rule 4800 Series applies only to decisions to prohibit or limit the listing of an issuer's securities on the Nasdaq.

The Proposed Listings Code provides that an issuer may request an extension of time to comply with any of the standards contained in the Rule 4000 Series or an exception to such standards. The granting of such an extension or exception is within the discretion of the NASD. During the review of a request for an extension or exception, the reviewing body will consider the original issue cited, but may also consider any additional issues, regardless of whether they were considered earlier in the proceeding. The Proposed Listings Code provides that the issuer will be notified of such consideration and given an opportunity to respond.

Proposed Rules 4815–4860 provide the general procedures that the Association and an issuer must follow with respect to any determination by the NASD to deny initial or continued listing to an issuer. Under proposed Rule 4815, Nasdaq staff in the Listing Qualifications Department or Listing Investigation Department will notify the issuer in writing of any decision to limit or prohibit the initial or continued listing of an issuer's securities. This notification will describe the specific grounds for the determination.

Proposed Rule 4820 provides that within 7 calendar days of receipt of this notification, the issuer may request a hearing for review of the determination.[6] If an issuer requests a review, the staff determination will generally be stayed pending the outcome of the review.[7] If no request for review is made, the determination will take effect after the time to request review has expired.

Proposed NASD Rule 4830 provides that all requests for review will be considered by an independent panel (''the Panel'') composed of at least two persons, not employees of the NASD or its subsidiaries. The Nasdaq Board of Directors will designate potential panelists. Panelists may include both securities and non-securities professionals, such as NASD members, issuers, attorneys or accountants. The Panel hearing will, to the extent practicable, be scheduled within 45 days of the date that the request for hearing is filed. After the Panel hearing, the Panel will issue a written decision that is effective immediately (unless the decision itself provdes otherwise).

Under proposed NASD Rule 4840, an issuer may request review of the Panel's decision within 15 days of the date the decision is issued. Such review is conducted by the Nasdaq Listing and Hearing Review Council (''Listing Council''). In addition, any member of the Listing Council may call a decision of the Panel for review within 45 days of the date of the issuance of that decision. Listing Council review of a matter generally does not stay the Panel decision (unless the call for review specifies otherwise). Given the heightened complexity of the procedure under the Proposed Listings Code and the additional resources that will be required as a result thereof, a fee of $1,400 for review by the Listing Council is included in the Proposed Listings Code. This fee is designed to recoup the costs of processing the request for review, including preparing and copying the record on review for the Review Council, staff resources within the Nasdaq Office of General Counsel for reviewing the record, advising the Review council, preparing the decision, and a proportionate part of the expense of Review Council meetings. The fee is designed to be revenue neutral and to directly offset the costs associated with the Review Council's review. The Association believes that the fee is consistent with the fee currently charged for Panel review of a written record.[8]

The Listing Council will review matters based on the written record and will issue a decision to affirm, modify, or reverse the decision, or remand the matter to Nasdaq staff or to the Panel.[9] This decision will be effective immediately, unless it specifies to the contrary. While these decisions remain subject to a call for review by the NASD Board of Governors, the ability to immediately issue a decision will allow the Council to act swiftly to delist a non-complaint issuer that is still trading on the Nasdaq Stock Market, or to permit an issuer who was wrongly delisted to return to the Nasdaq Stock Market more quickly. The Association believes that this ability will help it fulfill its directive to protect prospective investors.

Any member of the NASD Board may call a Listing Council decision for review at its next meeting that is 15 calendar days or more following the date of the Council decision. An issuer may not request that the NASD Board review the Council decision. If the NASD Board does not call a Council decision for review, the issuer will be notified that the Council decision represents the final action of the NASD. If the NASD Board does call a Council decision for review, the NASD Board will generally review the matter based on the record before the Listing Council. Ordinarily, the issuer will not be permitted to supplement the record on review.[10] The NASD Board may affirm, modify, or reverse the Listing Council decision and may remand the matter to the Council, the Panel, or Nasdaq staff.

Proposed NASD Rule 4870 defines what is included in the record on review at each level of a Rule 4800 proceeding. At each level of review, the issuer will be provided a list of documents included in the record on

other grievances concerning the Association's automated systems to the Rule 9700 Series. The NASD and NASD Regulation, Inc. plan to file changes to the Rule 9500 Series in the near term and, upon approval of those changes, the Rule 9700 Series will be deleted and non-listing related grievances and denials of access involving Nasdaq's automated systems will be reviewed through Rule 9500 Series procedures.

[6] The fee for such a review remains at its existing level of $1,400 for a review based on written submission and $2,300 for a review based on an oral presentation. The fee provisions have been relocated from Rule 4530 to Rule 4820(c).

[7] The Association is permitted, however, to suspend a security's inclusion in Nasdaq if the securities are not in compliance with the qualification requirements of NASD Rule 4310, or Rule 4320, or those requirements imposed by the NASD under NASD Rule 4330(a). In such exent, Nasdaq will notify the issuer prior to the suspension or as soon as practicable thereafter. *See* NASD Rule 4330(b). Furthermore, Nasdaq may halt trading in a security pending the dissemination of material news or when Nasdaq requests information from an issuer relating to material news, qualification matters, or other information necessary to protect the public interest. *See* NASD Rule 4120(a)(5).

[8] This fee was approved by the Commission in Exchange Act Release No. 37088 (April 9, 1996), 61 FR 16662 (April 16, 1996).

[9] The Listing Council may, at its sole discretion, also hold additional hearings.

[10] The NASD Board may, at its sole discretion, request additional information from the issuer and/or from Nasdaq staff and may, at its sole discretion, hold additional hearings.

review. In addition, any subsequent public filings made by the issuer and any subsequent information released to the public by the issuer may be added to the record on review, as well as any subsequent correspondence between the Association and the issuer. Furthermore, at any level of review, the deciding body may take note of the issuer's bid price and market makers at the time of consideration. The written record, as well as any documents excluded from the written record, will be maintained until the date upon which the decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court.

Time is computed within the Proposed Listings Code based on calendar days. In computing any period of time, the day of the act, event, or default from which the period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or NASD holiday. An NASD holiday is any day on which the Nasdaq or the executive offices of the NASD are closed for the entire day.

The Proposed Listings Code prohibits any communication relevant to the merits of a proceeding with anyone who is participating in or advising in the consideration of a matter (including members of the Listing Qualifications Panel, Listing Council, or Board of Governors and NASD employees), unless the issuer and the appropriate Nasdaq staff have been provided notice and an opportunity to participate in the communication. The purpose of this limitation is to prevent non-record information from being considered in rendering a decision in a matter. It is currently expected that Nasdaq staff generally will waive their rights under this provision, giving effect to Nasdaq's current general approach where listing decisions are considered in a non-adversarial business forum. The Proposed Listing Code also specifies that if an issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, communications about that submission will be excluded from the prohibitions discussed above.

Conforming changes are being made to Rules 4330 and 4480, and Rule 4530 is being removed because the substance of that Rule has been relocated to Rule 4820(c).

Effective Date: The renumbering of the existing Rule 4800 Series to the Rule 9700 Series and the changes being made to the Rule 9700 Series will be made effective immediately upon approval of this proposed rule change. The Rule 9700 Series, as hereby proposed, will be removed upon approval of revisions to the Rule 9500 Series that will be separately proposed.

The revised Rule 4800 Series will be made effective immediately upon approval for matters where the issuer has not yet received a Staff Determination, as defined in Rule 4815 of the Proposed Code. For issuers that have received notification from the staff that they will be delisted or denied initial inclusion prior to the date of approval, or that otherwise have matters pending before the Panel or the Listing Council prior to the date of approval, the existing Rule 4800 Series will continue to apply for 180 days. This period will permit Nasdaq to make an orderly transition from the existing rules to the Proposed Listings Code.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change balances the rights of issuers on the Nasdaq Stock Market with Nasdaq's obligation to protect investors and the public interest. The NASD also believes that the proposed rule change is consistent with the provisions of Section 19(d) of the Act[12] and Rule 19d–1 thereunder,[13] which govern a self-regulatory organization's obligations upon denying access to the services offered by the self-regulatory organization. The proposed rule change describes all administrative remedies that are available to an issuer prior to final action by the Association, as well as the availability of review by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit or receive written comments on the Proposed Listings Code.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 NASD. All submissions should refer to File No. SR–NASD–98–88 and should be submitted by January 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–417 Filed 1–7–99; 8:45 am]

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[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s–3(d).

[13] 17 CFR 240.19d–1.

[14] 17 CFR 100.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40870; File No. SR–Phlx–98–53]

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. Relating to Mandatory Year 2000 Testing

December 31, 1998.

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 December 8, 1998, as amended on December 28, 1998,[3] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposals make it mandatory for all Phlx members and participants to participate in Year 2000 testing. Specifically, proposed Rule 650 would provide mandatory participation and reporting in a manner and frequency prescribed by the Exchange, and would exempt certain members from participation as set forth in detail below.

The complete text of proposed Rule 650 is below. Proposed new language is italicized.

* * * * *

Rule 650

Mandatory Participation in Year 2000 Testing

Rule 650. Each member and member organization shall participate in testing of computer and computer related systems designed to prepare for the Year 2000 century date change in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing in a reasonably prompt fashion as requested by the Exchange. Any member or member organization which is subject to this rule and determined by the Exchange to be in violation of this rule may be subject to disciplinary action pursuant to the Exchange's rules.

Commentary

01. The Exchange may exempt a member or member firm from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test or if the member does not employ computers in its business or for other good reasons determined by the Exchange.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

For some time, the securities industry, including the Phlx, has been considering proper systems preparation in order to avoid potential computer problems associated with the approach of the Year 2000. The primary concern worldwide is that computer systems may incorrectly read, for example, the date ''01/01/00'' to be the year 1900, or some other incorrect date, causing problems with interest payments, loan delinquencies, failures in tracking date and time information regarding trades, and other yet unknown problems.

The concern has been addressed by the Exchange in stages, including both internal and external ''BETA'' testing. The next stage involves industry-wide testing of computer systems. Test participants are to include, among others, exchanges, registered clearing agencies and depositories, data processors and broker-dealers. To facilitate testing on an integrated, industry-wide basis, the Securities Industry Association (''SIA'') has undertaken to coordinate these efforts. Already, connectivity/format testing sessions, consisting of order entry/front end data from member firms to exchanges, and extended point-to-point testing sessions, consisting of exchanges executing mock orders and passing matched trade files to the utilities for clearance and settlement processing, is scheduled and being implemented. Phlx is participating in all phases of this testing, and proposes to mandate participation from members and member organizations.

The first industry-wide testing session involving processing of test scripts for order processing/order execution and reporting (using dummy security symbols and production clearing numbers) from member firms to exchanges, exchanges to utilities, and utilities to member firms, is scheduled to take place on Saturday, March 6, 1999. In order for a member firm to qualify to participate in the March 6, 1999 test session, they must participate in the scheduled connectivity and point-to-point testing sessions leading up to the March 6 date.

The rule is proposed to authorize the Exchange to require that members and member organizations participate in testing of computer systems in a manner and frequency as may be prescribed by the Exchange. The scope of the mandated test participation includes, but is not limited to, point-to-point testing, connectivity testing, and industry-wide testing conducted by the SIA (including prerequisite testing for schedules industry-wide testing), and other testing which may be required by the Exchange.

The rule contemplates that the Exchange may exempt a member from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test or if the member does not employ computers in its business, or for other good reasons determined by the Exchange.

A member or member organization that is not exempt from participation and nonetheless fails to participate in the tests or fails to file any reports required by the Exchange may be subject to disciplinary action pursuant to the Exchange's rules.[4] Such reports may include, *inter alia*, reports required of broker-dealers subject to the Net Capital Rule relating to systems preparedness for the Year 2000, pursuant to amended Exchange Act Rule 17a–5.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard Rudolph, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated December 23, 1998. The original filing was not noticed in the **Federal Register**.

[4] Proposed Rule 605 specifically states that any member or member organization determined by the Exchange to be in violation of the rule may be subject to disciplinary action pursuant to the Exchange's rules. While disciplinary action is implied as a consequence of any Exchange rule violation, proposed Rule 605 includes this clause in order to remain consistent with similar rules proposed by other exchanges, on which this proposed rule is based.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [5] in general, and in particular, with Section 6(b)(5),[6] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency through automation in the market and protecting the public through Year 2000 preparedness along with the securities industry.

B. Self Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with Section 6(b)(5) of the Act, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the Phlx's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** because the Exchange believes that the proposed rule change is necessary for the protection of investors and the safeguarding of the securities of investors, and that current participation in testing for the prevention of Year 2000 failures is critical during the next year. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of pubication of notice of the filing in the **Federal Register**. It is vital that self-regulatory organizations (''SROs'') such as the Phlx have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 informatin) to the SROs. The proposed rule change will help Phlx participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the Phlx's Year 2000 efforts are successful. The proposed rule change will also help the Phlx work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

IV. Solicitation of Comments

Interested persons are invited to submit written data, vies and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–53 and should be submitted by January 29, 1999.

V. Commission

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [7] that the proposed rule change (SR–Phlx–98–53) and Amendment No. 1 thereto is thereby approved on an accelerated basis.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–413 Filed 1–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40872; File No. SR–SCCP–98–05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Continuation of Limited Clearance and Settlement Services

December 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 9, 1998, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–SCCP–98–05) as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, SCCP will be permitted to provide limited clearance and settlement services for an additional one year period ending December 31, 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation, 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

In an agreement dated as of June 18, 1997, (''Agreement'') by and among the Philadelphia Stock Exchange, Incorporated (''PHLX''), SCCP, Philadelphia Depository Trust Company (''Philadep''), National Securities Clearing Corporation (''NSCC''), and The Depository Trust Company (''DTC''), it was agreed that as a part of SCCP's restructuring and limiting its clearance and settlement business SCCP participants would have access to the facilities of one or more other organizations providing full securities clearing services and that SCCP would transfer to the books of such other organizations the continuous net settlement (''CNS'') system open positions of SCCP participants shown on the books of SCCP.

On December 11, 1997, the Commission issued an order approving proposed rule changes related to the Agreement and SCCP's restructured and limited clearance and settlement business.[3] The approval order stated that:

However, because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain PHLX members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules, or Procedures through December 31, 1998.

SCCP proposes a one year extension of the approval order to continue SCCP's services to its participants. SCCP believes that its restructured operations have functioned consistently with the existing order and will continue to evaluate whether any adjustments are necessary.

Purpose

In the Commission's order approving the Agreement, many SCCP rules were amended and discussed at length. No changes to SCCP's rules are proposed at this time. Under the proposed rule change, SCCP will continue to provide trade confirmation and recording services for members of the PHLX that effect transactions through regional interface operations (''RIO'') and ex-clearing accounts. SCCP will also continue to provide margin accounts to certain participants that will be cleared through an account established by SCCP at NSCC.

Statutory Basis

SCCP believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to SCCP and in particular with Section 17A(b)(3)(F) of the Act,[4] which requires that a clearing agency be organized and its rules be designed among other things to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in its possession and control, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. SCCP believes that an extension of the approval of SCCP's restructured business should promote the prompt and accurate clearance and settlement of securities transactions by integrating and consolidating clearing services available to the industry and should assure the safeguarding of securities and funds in the custody or contract of SCCP or for which SCCP is responsible consistent with the aforementioned provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition.

SCCP does not believe that the proposed rule change should impose any burden on competition 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

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the information the Commission has to date, the Commission believes that SCCP's restructured operations have functioned satisfactorily under actual working conditions to provide prompt and accurate clearance and settlement. During the upcoming temporary approval period, the Commission will review with SCCP in further detail SCCP's restructured operations.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow SCCP to continue its restructured operations for another year (*i.e.*, through December 31, 1999) without interruption when the initial temporary approval order expires on December 31, 1998.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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

[2] The Commission has modified the text of the summaries prepared by SCCP.

[3] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703 [File Nos. SR–DTC–97–16, SR–NSCC–97–08, SR–Philadep–97–04, SR–SCCP–97–04] (order granting SCCP temporary approval through December 31, 1998, to provide limited clearance and settlement services to certain PHLX members). *See also* Securities Exchange Act Release No. 39445 (December 11, 1997), 62 FR 66709 [File No. SR–PHLX–97–59] (order granting PHLX approval to limit its clearing services and to stop providing depository services through its subsidiaries SCCP and Philadep in order to focus its resources on the operation of the exchange).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(F).

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–98–05 and should be submitted by January 29, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–SCCP–98–05) be and hereby is approved through December 31, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–416 Filed 1–7–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act 1974; Computer Matching Program (Agreement for SSA/Individual Source Jurisdictions Match of Data on Certain Fugitives and Probation or Parole Violators, Match #5000)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–2935 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support at the above address.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for or receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protection for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the match agreements by any appropriate Federal agency Data Integrity Boards;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: December 22, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) with Individual Source Jurisdictions

A. Participating Agencies

SSA and various State and local jurisdictions.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures for the disclosure to SSA by individual source jurisdictions, information on individuals who are fugitives from justice or parole or probation violators. Individual source jurisdictions will disclose information on certain individuals through a computer matching operation for SSA's use in verifying eligibility under Title II and Title XVI of the Social Security Act.

C. Authority for Conducting the Matching Program

This matching operation is carried out under the authority of sections 202(x)(1)(A)(I), 1611(e)(1)(A) and 1611(e)(5) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

Individual jurisdictions will submit names and other identifying information of individuals who are fugitives from justice or parole or probation violators. The SSA Master Files of Social Security Number (SSN) Holders and SSN Applications (SSA/OSR 09–60–0058) contains the SSNs and identifying information for all SSN holders. The SSA Master Beneficiary Record (SSA/OSR 09–60–0090) and the Supplemental Security Income Record (SSA/SSR 09–60–0103) contain beneficiary and payment information. SSA will match data from these record systems with data received from individual jurisdictions as a first step in detecting certain fugitives and probation or parole violators who should not be receiving Social Security or Supplemental Security Income (SSI) benefits.

E. Inclusive Dates of the Match

This matching program shall become effective no sooner than 40 days after notice of the program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–338 Filed 1–7–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2955]

Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

ACTION: Notice of a public meeting regarding Government Activities on

International Harmonization of Chemical Classification and Labeling Systems.

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted October 7, 1998. (See Department of State Public Notice 2896 on pages 51394–51395 of the **Federal Register** of September 25, 1998.) The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 10 a.m. until noon on January 11, 1999, in Room N 3437 A, B&C, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington DC 20520. Phone (202) 736–4660, fax (202) 647–5947. A public docket is also available for review (OSHA docket H–022H.)

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort often referred to as the ''globally harmonized system'' or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the October 7, 1998, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
   —UN Committee of Experts on the Transport of Dangerous Goods, December 7–16, Geneva, Switzerland. Among the GHS-related topics discussed at this meeting were the status of classification criteria for physical hazards and a proposed institutional setting within the UN ECOSOC for the GHS.
3. Preparation for upcoming meetings
   —Second meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organization Working Group on Hazard Communication, January 26–27, 1999, Geneva Switzerland
   —Thirteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, January 28–29, 1999, Geneva Switzerland.
   —Third meeting of the Organization for Economic Cooperation and Development Working Group on Classification Criteria for Mixtures, February 1–3, 1999, Paris, France.
4. Public Comments
5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC. (Telephone: 202–219–7894; Fax: 202–219–5046.) The public may also consult the docket to review previous **Federal Register** notices, comments received, Questions and Answers about the GHS, a response to comments on the April 3, 1997, **Federal Register** notice, and other relevant documents.

Dated: December 29, 1998.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 99–356 Filed 1–7–99; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

Delegation of Authority No. 227

By virtue of the authority vested in the Secretary of State by section 1 of the Department of State Basic Authorities Act (22 U.S.C. § 2651a), I hereby delegate to the Assistant Secretary for International Narcotics and Law Enforcement Affairs the function vested in the Secretary of State by 18 U.S.C. § 981(i), 19 U.S.C. 1616a(c)(2), and 21 U.S.C. 881(e)(1)(E), and similar statutes that may be enacted, to approve the transfer of forfeited assets to foreign governments. Notwithstanding this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any authority conferred upon the Secretary by these statutes on the transfer of forfeited assets to foreign governments. Any section affected by this delegation shall be deemed to such act as it may be amended from time to time.

This Delegation of Authority shall be published in the **Federal Register** and shall be effective upon date of signature.

Dated: December 17, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 99–357 Filed 1–7–99; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Meeting on Proposed Change of Sioux Falls Airspace From Class D to Class C

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting to solicit information from airspace users and others, concerning proposals to change the Class D airspace to Class C at Sioux Falls, SD. The purpose of this meeting is to provide views, recommendations, and comment on these proposals. All comments received during the meeting will be considered

prior to any revisions or issuance of notices of proposed rulemaking.

DATES: The informal airspace meeting will be held on Wednesday, March 3, 1999, starting at 7:00 p.m. Comments must be received on or before April 3, 1999. Date: March 3, 1999. Place: Gilbert Science Center Auditorium, Augustana College, 2001 South Summit Avenue, Sioux Falls, South Dakota.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines IL 60018.

FOR FURTHER INFORMATION CONTACT: Vinnie Vander Laan, Air Traffic Division, AGL–520, FAA, Great Lakes Regional Office, telephone (847) 294–7546.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meeting:

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA Great Lakes Region. A representative from the FAA will present a formal briefing on the proposed revisions of the airspace. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of the meeting will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. These should be additional copies of each handout available for other attendees.

(f) The meeting will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Agenda for the Meeting

Opening Remarks and Discussion of Meeting Procedures.

Briefing on Background for Proposals.

Public Presentations.

Closing Comments.

Issued in Des Plaines, Illinois on December 16, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 99–386 Filed 1–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33700]

The Burlington Northern and Santa Fe Railway Company—Operation Exemption—A Line of Railroad Owned by the City of Los Angeles, CA, Through Its Board of Harbor Commissioners

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1150.31 to operate a rail line owned by the City of Los Angeles, CA, through its Board of Harbor Commissioners, a noncarrier. The 0.8-mile rail line involved in this transaction is located between milepost 17.0 and milepost 17.8, in Los Angeles, and will constitute part of the Alameda Rail Corridor (Corridor).[1]

The exemption became effective on December 30, 1998, but the exempted transaction is not expected to be consummated until approximately March 2002.[2]

BNSF and the UP will operate the rail line as part of an overall coordination of rail operations along the Corridor that will give BNSF and UP access to facilities and terminals in the Ports of Los Angeles and Long Beach, CA.[3] As part of the coordination project, BNSF has concurrently filed a verified notice of exemption in STB Finance Docket No. 33701, *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railway Company*, to acquire overhead trackage rights.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33700, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–208 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Alameda Corridor Construction Application*, Finance Docket No. 32830 (STB served May 13, 1996).

[2] In order to comply with the funding requirements for the Corridor construction project, applicant states that authorization by the Board for these operating rights must be effective by December 31, 1998. Applicant notes that the segment of track involved in this proceeding is located within the Port of Los Angeles and is currently being operated by BNSF and the Union Pacific Railroad Company (UP) without prior Board authority pursuant to the provisions of 49 U.S.C. 10906. According to applicant, upon substantial completion of the Corridor, on or about March 2002, the segment of track will become part of the Corridor, and at that time, operations over the track that are authorized by this exemption will begin.

[3] UP has filed a separate notice of exemption to operate the line in STB Finance Docket No. 33698, *Union Pacific Railroad Company—Operation Exemption—A Line of Railroad Owned by the City of Los Angeles, CA, Through its Board of Harbor Commissioners.*

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33701]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's rail line located between UP milepost 484.9 and UP milepost 500.95, in Los Angeles, CA, that constitutes a portion of the Alameda Rail Corridor (Corridor).[1]

The exemption became effective on December 30, 1998, but the exempted transaction is not scheduled to be consummated until approximately March 2002.[2]

[1] The rail line is being constructed by the City of Los Angeles and the City of Long Beach on property acquired from predecessors of BNSF and UP. *See Alameda Corridor Construction Application*, Finance Docket No. 32830 (STB served May 13, 1996).

[2] While Board authorization of these trackage rights must be effective by December 31, 1998 in order to comply with the funding requirements for the Corridor construction project, the trackage rights will commence upon substantial completion of the Corridor, which is currently expected to be on or about March 2002.

The trackage rights are part of the overall coordination of rail operations along the Corridor that will give BNSF and UP access to facilities and terminals in the Ports of Los Angeles and Long Beach, CA. This transaction is related to STB Finance Docket No. 33700, *The Burlington Northern and Santa Fe Railway Company—Operation Exemption—A Line of Railroad Owned by the City of Los Aneles, CA, Through its Board of Harbor Commissioners,* wherein BNSF has concurrently filed a verified notice of exemption to acquire operating authority over a segment of rail line owned by the Port of Los Angeles that also constitutes a portion of the Corridor.

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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33701, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–209 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33691]

Chattooga and Chickamauga Railway Company—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company

The Chattooga and Chickamauga Railway Company (CCKY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Central of Georgia Railroad Company (COG) the right to conduct common carrier freight operations over approximately 48.9 miles of rail line extending between milepost CC–445.4 near Chattanooga, Hamilton County, TN, and milepost CC–396.5 near Lyerly, Chattanooga County, GA.[1]

The transaction was scheduled to take place as soon as possible after the December 17, 1998 effective date of the notice of exemption.

This transaction is related to STB Finance Docket No. 33690, *State of Georgia, Department of Transportation—Acquisition Exemption—Line of Central of Georgia Railroad Company,* wherein the State of Georgia, through its Department of Transportation is acquiring certain railroad assets of COG, including the above-noted 48.9-mile line of railroad, but not including the right to conduct common carrier freight operations.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33691, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William G. Burgin, Jr., 201 19th Street North, P.O. Box 1109, Columbus, MS 38701.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 31, 1998.

[1] CCKY currently conducts operations over the line pursuant to its lease agreement with COG.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–279 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33695]

Fredonia Valley Railroad, Inc.—Acquisition and Operation Exemption—in Caldwell County, KY

Fredonia Valley Railroad, Inc. (FVRR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 9.65 miles of rail line owned by Martin Marietta Materials, Inc., between milepost 87.60 near Fredonia and milepost 97.25 near Princeton in Caldwell County, KY.[1]

The transaction was scheduled to be consummated on or after the December 17, 1998 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33695, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–206 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The line to be acquired is a segment of a railroad line authorized for abandonment in *Western Kentucky Railway, L.L.C.—Abandonment—Between Blackford and Princeton, KY,* STB Docket No. AB–449 (Sub-No. 2) (STB served June 21, 1996).

FVRR certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33690]

State of Georgia, Department of Transportation—Acquisition Exemption—Line of Central of Georgia Railroad Company

The State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Central of Georgia Railroad Company (COG) certain railroad assets, including approximately 48.9 miles of rail line extending between milepost CC–445.4 near Chattanooga, Hamilton County, TN, and milepost CC–396.5 near Lyerly, Chattanooga County, GA.

GDOT, COG, and Chattooga and Chickamauga Railway Company (CCKY), a Class III rail carrier, will enter into certain agreements whereby GDOT will acquire from COG fee title to certain railroad assets, but not including the right to conduct common carrier freight operations. The assets will be sold by COG to GDOT, with COG retaining a permanent easement to conduct operations over the line. In a separate and concurrently executed agreement, COG will transfer its retained easement and all rights and obligations pertaining to the assets, including but not limited to the right to maintain and repair the physical assets on the line to CCKY, which will continue to conduct freight operations over the line.[1] It is intended that CCKY will assume COG's common carrier obligation, and that neither COG nor GDOT will have a common carrier obligation to provide freight services when the transaction is completed. COG and CCKY will retain their existing interchange arrangement at Chattanooga, TN.

The transaction was scheduled to take place as soon as possible after the December 18, 1998 effective date of the notice of exemption.

This transaction is related to STB Finance Docket No. 33691, *Chattooga and Chickamauga Railway Company—Acquisition and Operation Exemption—Line of Central of Georgia Railroad Company,* wherein CCKY seeks to acquire the right to conduct common carrier freight operations over the line being acquired by GDOT.

If the notice contains false or misleading information, the exemption is void *ab initio.*[2] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33690, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Luke Cousins, Georgia Department of Transportation, #2 Capitol Square, Atlanta, GA 30334–1002.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 31, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–278 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33698]

Union Pacific Railroad Company—Operation Exemption—A Line of Railroad Owned by the City of Los Angeles, CA, Through Its Board of Harbor Commissioners

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR 1150.31 to operate a rail line owned by the City of Los Angeles, CA, through its Board of Harbor Commissioners, a noncarrier. The 0.8-mile rail line involved in this transaction is located between milepost 17.0 and milepost 17.8, in Los Angeles, and will constitute part of the Alameda Rail Corridor (Corridor).[1]

The exemption became effective on December 30, 1998, but the exempted transaction is not expected to be consummated until approximately March 2002.[2]

UP and BNSF will operate the rail line as part of an overall coordination of rail operations along the Corridor that will give UP and BNSF access to facilities and terminals in the Ports of Los Angeles and Long Beach, CA.[3] As part of the coordination project, UP has concurrently filed a verified notice of exemption in STB Finance Docket No. 33702, *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* to acquire overhead trackage rights.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33698, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Antofer, Esq., 1416 Dodge Street, No. 830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–207 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33702]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line located between BNSF

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[1] CCKY currently conducts operations over the line pursuant to its lease agreement with COG.

[2] A motion to dismiss has been filed in this proceeding. The motion will be addressed in a subsequent Board decision.

[1] *See Alameda Corridor Construction Application,* Finance Docket No. 32830 (STB served May 13, 1996).

[2] Applicant notes that the segment of track involved in this proceeding is located within the Port of Los Angeles and is currently being operated by UP and The Burlington Northern Santa Fe Railroad (BNSF) without prior Board authority pursuant to the provisions of 49 U.S.C. 10906. According to applicant, upon substantial completion of the Corridor, on or about March 2002, the segment of track will become part of the Corridor, and at that time, operations over the track will require the Board authorization being requested in this proceeding.

[3] BNSF has filed a separate notice of exemption to operate the line in STB Finance Docket No. 33700, *The Burlington Northern and Santa Fe Railway Company—Operation Exemption—A Line of Railroad Owned by the City of Los Angeles, CA, Through its Board of Harbor Commissioners.*

milepost 27.6 and BNSF milepost 28.3, in Los Angeles, CA, that constitutes a portion of the Alameda Rail Corridor (Corridor).[1]

The transaction was scheduled to be consummated on substantial completion of the Corridor but not sooner than the December 30, 1998 effective date of the exemption.[2]

The trackage rights are part of the overall coordination of rail operations along the Corridor that will give UP and BNSF access to facilities and terminals in the Ports of Los Angeles and Long Beach, CA. This transaction is related to STB Finance Docket No. 33698, *Union Pacific Railroad Company—Operation Exemption—A Line of Railroad Owned by the City of Los Angeles, CA, Through its Board of Harbor Commissioners,* wherein UP has concurrently filed a verified notice of exemption to acquire operating authority over a segment of rail line owned by the Port of Los Angeles that also constitutes a portion of the Corridor.

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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33702, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, No. 830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–210 Filed 1–7–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The rail line currently being constructed by the City of Los Angeles and the City of Long Beach on property acquired from predecessors of UP and BNSF. *See Alameda Corridor Construction Application,* Finance Docket No. 32830 (STB served May 13, 1996).

[2] Applicant notes that the trackage rights must be effective by December 31, 1998 in order to comply with funding requirements for the Corridor construction project. In other related filings, UP and BNSF have indicated that substantial completion of the Corridor is expected to be approximately March 2002.

Corrections

Federal Register
Vol. 64, No. 5
Friday, January 8, 1999

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

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Clothes Washers

Correction

In proposed rule document 98–30555, beginning on page 64344, in the issue of Thursday, November 19, 1998, make the following correction:

On page 64358, Table 3 should appears as follows:

TABLE 3.—PERCENTILE LCC

Percent efficiency level	Change in LCC from baseline[1] shown by percentiles of the distribution of results[2] (values in $)								Percent with LCC less than baseline
	0	10	25	50	75	90	100	Mean	
5	($83)	($33)	($24)	($16)	($11)	($8)	($2)	($19)	100.0
10	($232)	($82)	($55)	($36)	($23)	($15)	$13	($43)	99.5
15	($402)	($140)	($90)	($55)	($33)	($19)	$63	($68)	95.6
20	($504)	($161)	($98)	($55)	($26)	$10	$129	($67)	86.7
25	($1,486)	($465)	($303)	($164)	($67)	$4	$137	($205)	89.2
35	($1,997)	($639)	($408)	($211)	($59)	$79	$570	($252)	83.4
40	($2,039)	($649)	($412)	($207)	($64)	$75	$645	($253)	83.7
45	($2,068)	($606)	($365)	($155)	$9	$159	$666	($199)	73.6
50	($2,075)	($617)	($374)	($156)	$6	$153	$571	($204)	74.2

[1] The baseline LCC, based on SWA of the most likely costs, is $1,554.
[2] For sample size of 10,000 trials. Energy price trends are for AEO 1998. Operating costs include water prices. No escalator is assumed for water price.

[FR Doc. C8–30555 Filed 1–7–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability and Opening of Comment Period for an Envrionmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Delmarva Fox Squirrel in Association wiht Home Port on Winchester Creek Development Project, Queen Anne's County, Maryland

Correction

In notice document 98–34673, beginning on page 72321, in the issue of Thursday, December 31, 1998, make the following correction:

On page 72321, in the second column, under the heading **DATES:**, in the fifth line, ''February 1, 1999'' should read ''February 5, 1999''.

[FR Doc. C8–34673 Filed 1–7–99; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday
January 8, 1999

Part II

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242
50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AD68

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments also extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the amendments specify that the Secretaries are retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference. The Departments also provide the Federal Subsistence Board with authority to investigate and make recommendations to the Secretaries regarding the possible existence of additional Federal reservations, Federal reserved water rights or other Federal interests, including those which attach to lands in which the United States has less than fee ownership. The regulatory amendments conform the Federal subsistence management regulations to the court decree issued in *State of Alaska* v. *Babbitt,* 72 F.3d 698 (9th Cir. 1995) *cert denied* 517 U.S. 1187 (1996). The rule includes updated Customary and Traditional Use Determinations and annual seasons and harvest limits for fisheries. This rulemaking also responds to the Petitions for Rulemaking submitted by the Northwest Arctic Regional Council al. on April 12, 1994, and the Mentasta Village Council, al. on July 15, 1993.

DATES: Sections ____.1 through ____.24 are effective October 1, 1999. Sections ____.26 and ____.27 are effective October 1, 1999 through February 29, 2001.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Subsistence Board assumed subsistence management responsibility for public lands in Alaska in 1990, after the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska,* 785 P.2d 1 (Alaska. 1989), *reh'g denied* (Alaska 1990), that the rural preference contained in the State's subsistence statute violated the Alaska Constitution. This ruling put the State's subsistence program out of compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and resulted in the Secretaries assuming subsistence management on the public lands in Alaska. The ''Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule'' was published in the **Federal Register** (55 FR 27114–27170) on June 29, 1990. The ''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register** (57 FR 22940–22964) on May 29, 1992.

In both cases, the rule ''generally excludes navigable waters'' from Federal subsistence management, 55 FR 27114, 27115 (1990); 57 FR 22940, 22942 (1992). In a lawsuit consolidated with *Alaska* v. *Babbitt,* plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of ''public lands'' set out in ANILCA. At oral argument before the United States District Court for Alaska, the United States took the position that Federal reserved water rights which encompass the subsistence purpose are public lands for purposes of ANILCA. The United States Court of Appeals for the Ninth Circuit subsequently held: ''[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine.'' *Alaska* v. *Babbitt,* 72 F.3d at 703–704. In the course of its decision, the Ninth Circuit also directed: ''[T]he federal agencies that administer the subsistence priority are responsible for identifying those waters.'' Id. at 704.

These amendments conform the Federal subsistence management regulations to the Ninth Circuit's ruling in *Alaska* v. *Babbitt.* As the Ninth Circuit directed, this document identifies Federal land units in which reserved water rights exist. These are ''public lands'' under the Ninth Circuit's decision in *Alaska* v. *Babbitt* and thus are subject to the Federal subsistence priority in Title VIII of ANILCA. The amendments also provide the Federal Subsistence Board with clear authority to administer the subsistence priority in these waters.

This Final Rule is not effective until October 1, 1999, in accordance with language contained in the Omnibus Appropriations Bill for FY99, which prohibits the implementation and enforcement of regulations related to expanded jurisdiction for subsistence management until October 1, but does allow publication of this rule. However, should the Secretary of the Interior certify before October 1, 1999, that the Alaska State Legislature has passed a bill or resolution to amend the Constitution of the State of Alaska, that, if approved by the electorate, would enable the implementation of State laws consistent with and which provide for the definition, preference, and participation described in Sections 803, 804, and 805 of ANILCA, then these regulations will be held in abeyance until December 1, 2000, and a timely document will be published in the **Federal Register** delaying the effective date.

On July 15, 1993, the Mentasta Village Council, Native Village of Quinhagak, Native Village of Goodnews Bay, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP, Katie John, Doris Charles, Louie Smith and Annie Cleveland filed a ''Petition for Rulemaking by the Secretaries of Interior and Agriculture that Navigable Waters and Federal Reserved Waters are 'Public Lands' Subject to Title VIII of ANILCA's Subsistence Priority.'' On April 12, 1994, the Northwest Arctic Regional Council, Stevens Village Council, Kawerak, Inc., Copper River Native Association, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP and Dinyee Corporation

filed a ''Petition for Rule-Making by the Secretaries of Interior and Agriculture that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA and that Uses on Non-Public Lands in Alaska May Be Restricted to Protect Subsistence Uses on Public Lands in Alaska.'' A Request for Comments on this Petition was published at 60 FR 6466 (1995). This rule also responds to both petitions for rulemaking.

Federal Subsistence Regional Advisory Councils

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

The Regional Councils have had a substantial role in reviewing the proposed rule and making recommendations for the final rule.

Public Review and Comment

The Secretaries published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 15014) on April 4, 1996, and during May and June held eleven public hearings around Alaska to solicit comments on the Advance Notice. On December 17, 1997, the Secretaries published a Proposed Rule (62 FR 66216) and held 31 public hearings around the State, as well as soliciting input from the ten Federal Regional Subsistence Advisory Councils. The Proposed Rule was also available for review through the Office of Subsistence Management's home page at http://www.r7.fws.gov/asm/home.html.

In addition to the oral testimony received at the public hearings and Regional Council meetings, we received an additional 74 written comments. The comments received both in writing and during the hearings provided the agencies with a sense of how the public viewed the general jurisdictional concepts and practical implementation aspects of the rule.

Analysis of Federal Subsistence Regional Advisory Councils' Comments

The ten Regional Councils were given an opportunity to comment on a draft of the Proposed Rule during their regular meetings in the fall of 1997, and then again on the Proposed Rule itself during their winter 1998 meetings. This section summarizes the comments received from the Councils and our analysis of those comments.

Southeast Regional Council—Some Council members expressed a need to include under Federal jurisdiction all lands and waters originally included in the proclamation establishing the Tongass National Forest, including the marine waters. This issue is the subject of pending litigation, *Peratrovich* v. *United States,* A92–734 (D–AK); therefore, the Final Rule will not be modified to include the marine waters within the original proclamation area.

Southcentral Regional Council—The Regional Council asked a number of questions but had no recommendations.

Kodiak/Aleutians Regional Council—The Regional Council expressed concern regarding the loss over time of subsistence marine resources. It did not make any formal recommendation on the Proposed Rule. The regulations clearly identify which marine waters are under Federal jurisdiction by referring to the original **Federal Register** publications delineating boundaries of the listed Federal land units. The issue of expanding the Federal jurisdiction to other marine waters outside the listed Federal land units is beyond the scope of this rule.

Bristol Bay Regional Council—The Council expressed concern that customary and traditional use determination findings for some communities need to be revised and that wording on the take of rainbow trout and steelhead should be revised. Additional concern was expressed about how to deal with the definition of customary trade and implementing regulations. Changes to the customary and traditional use determinations and taking regulations on rainbow trout would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of ''significant commercial enterprise'' or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

Yukon-Kuskokwim Delta Regional Council—The Regional Council suggested more publicity clarifying the program, particularly in smaller, coastal villages and a publicity effort to let people know what is going to happen before it actually does. After publication, a condensed easy-to-read booklet with the regulations will be prepared and distributed to the public. The field offices of the Federal agencies that are a part of the Federal Subsistence Board will make this regulation, and information about the Federal program, available to villages within their areas.

Western Interior Regional Council—The Council expressed concern regarding the regulations addressing customary trade and the necessity to provide for ongoing practices; also the necessity to prevent wanton waste. We have added language prohibiting wanton waste of subsistence-taken fish and shellfish. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of ''significant commercial enterprise'' or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

Seward Peninsula Regional Council—The Regional Council asked a number of questions but had no recommendations.

Northwest Arctic Regional Council—The Regional Council had one recommendation: to eliminate a subsistence fishing closure where no similar sport closure currently exists. Recommendations for specific closures would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals.

Eastern Interior Regional Council—The Council expressed concern regarding restrictions on customary trade. They asked that sections be rewritten to allow subsistence harvest by commercial license holders, and also recommended that agreements be made for local harvest data collection, and recommended that the ''two basket'' restriction for fishwheels not apply to the Yukon, Kuskokwim, Tanana, and

Copper Rivers. The existing regulations already authorize the Board to enter into cooperative agreements for harvest data collection. The recommendation related to the ''two basket'' restriction for fishwheels would be more appropriately handled as a proposal. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of ''significant commercial enterprise'' or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

North Slope Regional Council—The Regional Council comments centered around not creating any more restrictions on the Inupiaq way of life. The Council recommended that the C & T restriction for Unit 26(B) be stated more clearly as ''except for those living in Prudhoe Bay and other oil industry complexes.'' Changes to the customary and traditional use determinations would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals.

Analysis of Public Comments

General Comments

Several commentors questioned the adequacy of the Environmental Assessment, and suggested that it significantly understated the economic impacts of the Proposed Rule, particularly because of ''customary trade'' provisions of the rule. One commentor said that there should be an economic cost-benefit analysis done, and another said that the Proposed Rule was in violation of the Regulatory Flexibility Act, because no regulatory flexibility analysis was performed. The Final Rule is not expected to have a significant impact on either the physical environment or the socio-economic activities generated by Alaska's fisheries. For the most part, this rule continues pre-existing subsistence harvest activities at a level already occurring under State management. If there is any additional reallocation of fish or wildlife resources to subsistence users adopted in future annual regulations, it will likely be a relatively minor additional percentage of the fish harvested annually for other purposes in Alaska. ANILCA Title VIII does not require a cost-benefit analysis, nor does NEPA require such an analysis in the Environmental Assessment. Federal subsistence management under Title VIII of ANILCA will be designed to protect existing customary and traditional subsistence uses, including ongoing customary trade which may not be sanctioned by existing State regulations. It is not the intent of these regulations to encourage new subsistence fisheries. Because of this, the Departments certify that the proposed action represented by this final rulemaking will not have a significant effect on small entities and a flexibility analysis under the Regulatory Flexibility Act, Public Law 96–354, is not required.

One commentor said that the Proposed Rule violated Executive Order 12612, stating that it requires Federal agencies to examine the authority supporting any Federal action to limit the policy-making discretion of the states. The Final Rule clearly complies with Executive Order 12612, since it is implementing the U.S. Ninth Circuit Court of Appeals decision in *State of Alaska* v. *Babbitt*, 72 F.3d 698 (9th Cir. 1995) *cert denied* 517 U.S. 1187 (1996).

One commentor said that the Proposed Rule violated Executive Order 12866, stating that it requires Federal agencies to seek special involvement of those expected to be burdened by any regulation, specifically State officials, and stated that such involvement has not occurred. This rule does not impose any new requirements on the State of Alaska. The Board has worked closely with the State of Alaska since the inception of Federal subsistence management in 1990 and has continued to do so throughout the development of this rule. Cooperative agreements and cooperative management efforts with the State are beneficial to both parties and are ongoing.

The same commentor suggested the proposed rule also violated Executive Order 12988, stating that it requires regulations be written to minimize litigation and to provide a clear legal standard for affected conduct. Several provisions of the proposed rule have been modified in this final rule to clarify the legal standard for conduct. However, other provisions are unchanged in order to create a regulatory framework that will implement the subsistence priority mandates of ANILCA Title VIII, minimize socio-economic impacts, and ensure that resource conservation standards in ANILCA are met.

One commentor said that these regulations should comply with the Clean Water and Antidegredation Acts. These regulations are consistent with the Clean Water Act and all other Federal laws.

One commentor recommended that the Federal Subsistence Board adopt an expedited process so that recommendations for regulatory changes could be adopted for the 1999 fishing season. The Board can not do this, because of the existence of Congressional limitations on implementation. Legislation enacted in October 1998 restricts implementation of these regulations until October 1, 1999.

One commentor recommended that the government should hire locally to manage the fisheries. The Federal agencies that are members of the Federal Subsistence Board will utilize the local hire authority of ANILCA to the maximum extent possible when hiring personnel to work in the Federal program.

One commentor suggested that the regulations needed to be written in plainer language and that the Federal Subsistence Board should send representatives to villages to explain them before the regulations go into effect. The regulations have been significantly re-written to put them in to plain language. After publication a condensed easy to read booklet with the regulations will be prepared and distributed to the public. The Board has made considerable effort to provide information about the expanded Federal fishery management program through numerous public hearings, regional advisory council meetings, press releases, and wide dissemination of information to an extensive mailing list. This final regulation will be mailed to over 2700 individuals and organizations in Alaska. The field offices of the Federal agencies that are a part of the Federal Subsistence Board will make this regulation, and information about the Federal program, available to villages within their areas.

One commentor said that there was no Alaska Native organization listed as being involved in the drafting of the proposed rule. Native organizations throughout the State have had an opportunity to provide input on this rule a number of times—after the issuance of the Advanced Notice of Proposed Rulemaking (April 4, 1996), during Regional Advisory Council meetings held throughout the State in

the fall of 1997, during a 120-day public comment period after the publication of the proposed rule on December 17, 1997, and during 31 public hearings and 10 Regional Advisory Council meetings held around the State during that public comment period. In addition, as a member of the Federal Subsistence Board, the Bureau of Indian Affairs has been directly involved in the drafting of the Proposed Rule and this Final Rule.

Subpart A—General Provisions

____.*2 Authority.*

One commentor asked how the Pacific Salmon Treaty with Canada fit in with these regulations. These regulations are consistent with all existing treaties.

____.*3 Applicability and scope.*

The suggestion was made to include navigable waters on BLM lands. BLM lands set aside for specific purposes, such as Steese and White Mountains Conservation Areas, have Federal reserved water rights and are included within the scope of these regulations. Other BLM lands are general public domain lands without specific purposes and do not have reserved water rights.

Several commentors suggested that waters with Federal subsistence jurisdiction should be delineated the same for Forest Service lands as they are for Department of the Interior lands, and that Federal jurisdiction should be extended to include the marine waters identified in the 1907 Tongass National Forest Proclamation. The Final Rule has been modified from the Proposed Rule so that the definition of inland waters covered under this rule is consistent for Forest Service and DOI waters. The Federal subsistence jurisdiction asserted in the Final Rule applies to waters where the Federal government holds a reserved water right or holds title to the waters or submerged lands. A Federal water right exists in inland waters within or adjacent to Federal conservation system units and national forests. The question of Federal jurisdiction over marine waters included in the Tongass Proclamation is the subject of pending litigation in *Peratrovich* v. *United States*, A92–734 (D. AK), and therefore those marine waters are not included in this rule.

Five commentors suggested that the scope of the Federal fishery management should be extended to include waters on Native corporation lands or to include all navigable waters within the state of Alaska. To do so would improperly extend the scope of the Federal program beyond the scope of Title VIII of ANILCA or the direction of the Ninth Circuit Court in the Katie John decision. In Title VIII Congress mandated the implementation of a subsistence priority on Federal public lands. Native corporation and other non-Federal lands and waters located beyond the boundaries of the conservation system units and other areas specified in § ____.3 do not fall within the scope of Title VIII. In the Katie John decision, the Ninth Circuit Court ruled that the Federal program should include those waters where the Federal government retains a reserved water right. Those waters are identified in § ____.3 of this rule.

Two commentors questioned the inclusion of inland waters adjacent to conservation system unit boundaries within the scope of Federal subsistence jurisdiction, and also questioned the inclusion of waters on inholdings within those unit boundaries. We have determined that a Federal reserved water right exists in those waters and that their inclusion is necessary for effective management of subsistence fisheries. Therefore, they are included.

One commentor said that waters flowing through or adjacent to Native allotments should be subject to the Federal subsistence jurisdiction. Many Native allotments are within the boundaries of the Federal lands identified in § ____.3 of this rule, and therefore waters flowing through or adjacent to those allotments are subject to a Federal reserved water right and Federal subsistence jurisdiction. However, Native allotments falling outside of the lands and waters identified in § ____.3 are not included. Whether there are Federal reserved water rights associated with any of these small, scattered parcels would have to be determined on a case-by-case basis. These regulations contain a process for the Board to make recommendations to the Secretaries for additions, if necessary.

One commentor said that the proposed regulations did not address problems with sport fishing lodges in the Togiak drainage, or with other issues related to sport and commercial fishing or pollution of spawning grounds. This rule provides an opportunity for, and regulates, subsistence hunting, trapping, and fishing only. As such, the regulations do not contain specific provisions for sport or commercial fishing. However, the impacts of all fishery allocations and harvests were considered in the preparation of this Final Rule, and will be considered in the annual review of Subpart D regulations.

One commentor said that lakes should be included within the Federal program, and specifically mentioned Teshekpuk Lake. One commentor recommended that the Delta River, all of the Gulkana River, Tiekel River and Little Tonsina River should be included in the Federal program. All inland waters (including lakes and rivers) within and adjacent to the areas identified in § ____.3 of this rule are included in the Federal subsistence jurisdiction. Teshekpuk Lake is included. Those portions of the above-named rivers that are included within or adjacent to the boundaries of the units identified in § ____.3 of these regulations are included within the Federal subsistence jurisdiction; any waters falling outside of the units identified are not included.

Two commentors said that Glacier Bay National Park should be included in these regulations. When Congress passed ANILCA, it stated (in Sections 203 and 1314(c)) that subsistence uses are permitted only in those national park or national monument areas where specifically authorized by the Act. Subsistence uses in Glacier Bay National Park were not specifically permitted by the Act, and can therefore not be authorized by these regulations.

One commentor noted that this rule would not protect subsistence opportunities on Native corporation lands. This is correct, since Native corporation lands (which have been conveyed or interim conveyed to corporations) are no longer Federal lands and thus not within the scope of the subsistence priority of ANILCA. However, any inland waters located within or adjacent to the external boundaries of the units identified in § ____.3 will fall within Federal subsistence jurisdiction.

Numerous commentors said that the proposed rule did not clearly identify where the proposed rule would apply, particularly with regards to marine waters. The same commentors also said that there were specific regulations regarding the taking of fish and shellfish in §§ ____.26 and 27 of this rule that related to fisheries where there did not appear to be any Federal waters or reserved water rights. The Final Rule lists the Federal land units where the rule will apply in § ____.3. Pursuant to Section 103 of ANILCA, maps and detailed legal descriptions of the boundaries of those National Park Service and Fish and Wildlife Service units were published in the **Federal Register**, including descriptions of the boundaries of units of the National Wildlife Refuge System which include marine waters. *See* 48 FR 7890 (February 24, 1983) (Boundaries of National Wildlife Refuges in Alaska); 57 FR 45166 (September 30, 1992) (Boundaries of National Park System

Units in Alaska). These legal descriptions and maps specifically identify the marine areas where the rule will apply. We also reviewed all the specific regulations found in §§ ____.26 and 27 and removed any regulations that did not apply to lands or waters identified in § ____.3.

One commentor said that halibut and seagull eggs should be included in the Federal subsistence program. While these regulations only apply to relatively few marine waters (see the list of marine waters in § ____.3), fish within those waters are subject to the subsistence priority and regulations for the subsistence harvest of halibut and other fish will be included for those waters. As for seagull eggs, the harvest of migratory birds (including seagull eggs) is not included within the Federal subsistence management program. Harvest of migratory birds falls under the Migratory Bird Treaty Act and its implementing regulations.

____.4 Definitions.

One commentor said that the definition of ''conservation of healthy populations of fish and wildlife'' appears to contradict Section 815 of ANILCA. The definition was not amended in these regulations. Section 815 states, in part, that nothing in Title VIII permits a level of subsistence uses of fish and wildlife in a conservation system unit to be inconsistent with the conservation of healthy populations (or inconsistent with natural and healthy populations within a national park or monument). The existing definition in this section simply defines the phrase found in Section 815, but does not contradict or supersede it.

One commentor said that the existing definition of the word ''family'' would permit sharing of subsistence resources outside the household, and thereby expand subsistence uses. Section 803 of ANILCA specifically includes ''sharing for personal or family consumption'' within the definition of ''subsistence uses''. Permitting the sharing of subsistence resources outside the household will not expand current levels of subsistence harvest, since such sharing has always been a customary and traditional practice. The definition was not amended by these regulations.

Two commentors said that the Federal subsistence jurisdiction should be extended to Federal lands which have been selected, but not yet conveyed, to Native corporations or the State of Alaska, including those lands classified as over-selections. Two other commentors objected to the inclusion of selected lands within the program. While selected lands do not fall within the definition of ''public lands'' found in ANILCA, section 906(o)(2) states that ''Until conveyed, *all* Federal lands within the boundaries of a conservation system unit, National Recreation Area, National Conservation Area, new national forest or forest addition, shall be administered in accordance with the laws applicable to such unit.'' (emphasis added). Since selected lands do fall within the definition of ''Federal lands'' in ANILCA and Title VIII of ANILCA is a law applicable to such units, the subsistence priority of Title VIII must be extended to those lands, pursuant to section 906(o)(2). The definition of ''public lands or public land'' found in _____.4 of these regulations clarifies that selected lands will be treated as public lands until they are conveyed.

One commentor asked how the adoption of a fisheries regulatory year different from the wildlife regulatory year would affect regional advisory council and Federal Subsistence Board schedules. Another commentor said that the proposed fishery regulatory year would create conflicts with State regulations because of conflicting seasons and harvest reporting periods, and would complicate comparison of State and Federal information. The adoption of a different fisheries regulatory year is intended to provide a regulatory schedule that is the most efficient in managing an annual cycle of fishing regulations, and which has the least impact on subsistence users. Schedules for regular meetings of the Regional Advisory Councils and Federal Subsistence Board dealing with fishery issues will be adjusted to coincide with the fisheries regulatory year. The Federal Subsistence Board will work with the Alaska Department of Fish and Game and the State Board of Fisheries to minimize any conflicts created by this action.

____.6 Licenses, permits, harvest tickets, tags, and reports

One commentor recommended that subsistence users should be required to possess a valid Alaska resident fishing license. This section of the regulations was rewritten to conform with plain language requirements; no substantive changes were made. Subsistence users wishing to take fish and wildlife on public lands for subsistence uses are required to possess the pertinent valid Alaska resident hunting and trapping license. At the current time, the State of Alaska does not require a license for subsistence fishing, therefore no license is required for subsistence users under the Final Rule.

It was suggested that State licenses and permits not be used. We have attempted to avoid confusion and unnecessary duplication wherever possible when establishing this new program. The retention of State permits and licenses is one area where it is possible to avoid unnecessary duplication. Federal permits and licenses may be issued in certain situations as warranted.

One commentor said that the existing State harvest reporting system should be used for any harvest reporting required under these regulations. This will be done to the maximum extent possible.

One commentor pointed out that the proposed rule and the existing Federal subsistence regulations state in § ____.6(d) that ''Community harvests are reviewed annually under the regulations in subpart D of this part.'', and questioned whether those annual reviews have been conducted in the past. Such review is incorporated into the annual review of all subpart D regulations, which are subject to modification by proposals from Regional Advisory Councils, subsistence users, and any other interested organizations or individuals.

____.8 Penalties

One commentor suggested that enforcement of these regulations should be by the Federal Subsistence Management Program through cooperative agreements and that there should be no State enforcement of these regulations by the State of Alaska. The existing regulations provide that enforcement of these regulations will be retained by the individual land management agencies that are a part of the Federal Subsistence Board. This provision has not been amended. The State of Alaska will not generally be enforcing these regulations, unless authorized to do so through some special arrangement or mutual assistance agreement. However, the State of Alaska will continue to enforce on Federal lands other applicable State laws and regulations which are not inconsistent with these regulations or other Federal laws.

One commentor said that there was no information in the regulations about penalties. One commentor said that the Proposed Rule had no provision for enforcement, particularly in regards to the issue of customary trade. Enforcement of these regulations is accomplished in accordance with the penalty provisions applicable to the public land where the violation occurred. Each of the Federal land management agencies that are a part of the Federal Subsistence Board (Bureau

of Land Management, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, National Park Service, and U.S. Forest Service) have separate penalty provisions for offenses occurring on lands they manage. More detailed information can be obtained from each agency.

____.9 Information collection requirements

One commentor said that data collection to manage the Federal subsistence program is prohibited unless approved by the Office of Management and Budget (OMB). While OMB approval is not required for all data collection, it is required where Federal officials request information from more than ten persons. As stated elsewhere in this preamble (Paperwork Reduction Act), OMB has already approved the initial information collection requirements of these regulations and additional approvals will be sought whenever required.

____.10 Federal Subsistence Board

Several commentors disagreed with the language of § ____.10(a) of the Proposed Rule which stated that the Secretaries retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters other than the lands identified in the applicability and scope section of the regulation. We did not modify this section. The authority of the Secretaries to restrict or eliminate activities off Federal public lands has been confirmed in cases as *Kleppe* v. *New Mexico* (426 U.S. 529) and *Minnesota* v. *Block* (660 F.2d 817). This regulation does not expand or diminish the Secretaries' authority, it only states that it exists. This authority has rarely been exercised and is not exercised in this Final Rule.

One commentor recommended that the Secretaries should delegate to the Federal Subsistence Board authority to extend jurisdiction beyond Federal lands. Extension of Federal jurisdiction is a significant policy decision, only applied in very rare circumstances, and the Secretaries have chosen not to delegate that authority to the Board. They have delegated overall management of the subsistence program to the Board. By adoption of these regulations, the Board will assume the responsibility for management of an expanded fishery program on all lands identified in § ____.3 of this rule.

One commentor said that the Federal agencies do not have sufficient expertise to assure compliance with ANILCA, and recommended that management authority be vested in the National Marine Fisheries Service and that the regulations provide clear guidelines for cooperation with the Alaska Department of Fish and Game. The Federal Subsistence Board, and its member agencies, understand the complexity of the issues associated with the implementation of these regulations. The Board will obtain whatever expertise is needed to implement these regulations in order to assure that the subsistence opportunity is protected consistent with the conservation of healthy populations of fishery resources.

One commentor recommended that a tribal liaison appointed by the Federally-recognized tribes should be included as one of the official liaisons to the Federal Subsistence Board. Any tribe or group of tribes (or any other organization) can designate at any time a person to act in a liaison role to the Board. At this time, the Board believes that tribes have sufficient opportunity to provide input to the Board through the existing Regional Advisory Council structure, or through direct presentation of information to the Board without the designation of a formal liaison position.

One commentor recommended that the Chairs of the ten Regional Advisory Councils be included as voting members of the Federal Subsistence Board. Separate from this rulemaking, the Federal Subsistence Board just recently completed an internal examination the Board structure and considered one option of including Regional Council chairs on the Board. That option was rejected, in part because ANILCA stipulates that the Regional Councils are to provide recommendations to the government. A conflict would occur if those chairs sat on a board that would deliberate and make decisions on recommendations made by the Councils on which those chairs sit.

Five commentors recommended that use of compacts, contracts, and co-management or other agreements should be included within this rule. We clarified the wording of this section without changing its scope by changing the phrase ''Native corporations'' to ''Native organizations.'' Section 10(d)(4)(xv) of this regulation now states that the Federal Subsistence Board may ''Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program''. This regulatory language derives from section 809 of ANILCA, and permits a wide range of cooperative mechanisms to carry out the purposes of the title, including, where appropriate, the cooperative mechanisms suggested above. The subsistence priority of Title VIII is not solely a priority for Alaska Natives, but is a priority for all rural residents, Native or otherwise.

One commentor objected to § ____.10(d)(4)(xviii) of the Proposed Rule which states that the Board can investigate and make recommendations to the Secretaries identifying additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters to which the Title VIII subsistence priority would be extended. This commentor said that section constituted a granting authority beyond the scope of ANILCA. We did not revise this section in this final rule. If additional waters or Federal interests are proposed for inclusion, the Board would need to investigate and provide a recommendation based on their findings to the Secretaries. This section only authorizes the Board to do so. The addition of any other waters or interests to this rule will involve a further rulemaking, with public notice and comment.

Two commentors questioned the regulation dealing with delegation of certain actions by the Board to agency field officials (§ ____.10(d)(6)). One said that the regulatory language was not clear as to what type of actions might be delegated and the other said that field officials might abuse such delegation resulting in harm to the resource. As written, such delegation will be limited to setting harvest limits, defining harvest areas, and opening or closing specific fish or wildlife harvests. In all cases such delegation will specifically define ''frameworks established by the Board'' as specified in the regulation. Thus, field officials will always be constrained by the framework of any delegation, and the Board will not lose its oversight of actions by agency officials.

One commentor recommended that the authority to open or close fish or wildlife harvest seasons should be community-based, and not in the hands of an agency field official. Implementation and enforcement of Federal regulations is the responsibility of the Departments. Field managers will work with local communities and local biologists to assure that community interests are addressed in any actions.

____.11 Regional advisory councils

Four organizations or individuals commented on the make up of the Regional Advisory Councils. Two

recommended that the Council membership include fish and game biologists or individuals familiar with non-subsistence uses in the region. One suggested that the Councils need more representation from other user groups. The fourth recommended that there should be tribal recognition and tribal recommendations for appointments to the Councils. The Regional Advisory Councils were established pursuant to section 805(a) of ANILCA and § ____.11 of these regulations, and are charged with providing recommendations to the Board relating to subsistence uses within each region. The Board considers the recommendations of the Councils, along with technical information gathered by Federal staff, and testimony presented to the Board by other organizations and individuals. The input of other fish and game biologists and organizations or individuals knowledgeable about non-subsistence uses is considered by the Board before taking action on Council recommendations. Tribal recommendations, as well as recommendations by other organizations or individuals, are considered in the selection of Council membership. No changes were made in this section of these regulations.

One commentor recommended that Regional Council members should be elected, but did not specify by whom. This recommendation was not adopted, because ANILCA requires that persons serving as members of these Councils must be appointed by the Secretaries.

____.12 Local Advisory Committees.

There were several comments in regards to the role of local advisory committees in the Federal process, especially on the Yukon River. Local fish and game advisory committees have the opportunity to be involved in Federal subsistence management program by submitting recommendations to the Federal Subsistence Board and Regional Advisory Councils. The Federal Subsistence Board will seek guidance and expertise from all user groups. Two commentors requested a committee for their area or village. The creation of local fish and game advisory committees is a function of the Alaska Department of Fish and Game. The request should be made to them. One commentor suggested that existing State advisory committees should be used as opposed to creating a separate system. Local advisory committees may be used in addition to Regional Advisory Councils; a separate system will not be created. The Federal Subsistence Board will seek the best information available for regulation development. Local advisory committee input is always welcome under current and proposed rules.

____.14 Relationships to State Provisions and Regulations.

One commentor said that the Proposed Rule and Environmental Assessment did not adequately explore mechanisms for cooperation or outline the Secretaries' expectations of the Federal agencies for cooperation. There will be ample opportunities for cooperation with the State under the Final Rule. A question arose concerning timely reassertion of State authority over subsistence and suggested imposing a time limit once the petition to reassert is filed. This section was not amended and no time limit was included in this Final Rule. The Secretaries will act expeditiously when a petition for reassumption is filed. One commentor requested a transition period from Federal to State management authority for specific regulations. The Secretary will not certify a State subsistence management program unless the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference and participation specified in sections 803, 804, and 805 of ANILCA.

One commentor said that the proposed regulations did not support State conservation efforts, since the State has already implemented many changes to its regulations through fishery management plans since the Proposed Rule was published. To the extent possible, these final regulations incorporate changes to make them consistent with existing State regulations. The Board intends to utilize, to the extent possible, the existing State fishery management plans, but all those plans must be reviewed to ensure that the fishery allocation determinations in the plans are consistent with the subsistence priority of ANILCA.

One commentor suggested that the Federal subsistence regulations should adopt State regulations to the maximum extent possible, and that the Federal regulations should only include those regulations that differ from existing State regulations. As already stated, it has always been the intent of the Board with the adoption of these regulations to be consistent with existing State regulations except where specifically noted. However, we believe that to include in the Federal regulations only those areas where the Federal regulations differ from State regulations would be more confusing to subsistence users who would then have to refer to two sets of regulations while hunting or fishing on Federal lands.

____.16 The Customary and Traditional Use Determination Process.

One commentor suggested that the Federal Subsistence Board abandon the Customary and Traditional use determination process and make determinations on a geographical basis. The Customary and Traditional use determination process is currently being evaluated. The Federal Subsistence Board accepts proposals for changes annually, but no changes were made in this section in the Final Rule.

____.19 Closures and Other Special Actions.

Several commentors stated the closure provisions are too cumbersome, bureaucratic, and do not accurately define the circumstances under which the Federal Subsistence Board may take action to ensure resource conservation. The Secretaries understand this concern; this Final Rule grants to the Board specific authority to ''* * * delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.'' (§ ____.10(d)(6). Implementation of this regulation will provide for less cumbersome management actions, while retaining Board oversight of those actions.

Subpart C—Board Determinations

____.22 Subsistence Resource Regions.

Two commentors urged the formation of a Yukon River Regional Council while one suggested two Councils for the Southeast Region; one for game and another for fish. The Federal Subsistence Board will not make these changes at this time but will continue to evaluate the efficiency of the current structure and make future adjustments as needed.

____.23 Rural Determinations.

Two commentors questioned the basis for and outcomes of the rural determinations. The procedure for making rural/non-rural determinations was developed previously with public input through a rulemaking process as were the existing rural/non-rural determinations. Those determinations will be reviewed after the year 2000 census results are available.

____.24 Customary and Traditional Use Determinations.

One commentor suggested that the Federal Subsistence Board should make customary and traditional use determinations by geographic area rather than species. Another objected to making customary and traditional use determinations that have not been subjected to public review and suggested that C&T determinations be accompanied by a determination of the amount of fish and wildlife reasonably necessary to provide for subsistence on public lands. The Federal Subsistence Board has established a task force to evaluate the existing C&T process and will seek Regional Advisory Council input on various alternatives before making changes, if any, to the current regulations.

One commentor said that the rule should be modified to require a positive affirmation of customary and traditional use in order for subsistence regulations to apply. We did not make this change. To require a positive affirmation of use puts the burden on the subsistence user to ensure that his or her use is authorized in regulation. The current Federal subsistence regulations state in part that: ''If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.'' , § ____.24(a). This regulation already covers customary and traditional use determinations for fish, and does not need to be modified.

Several other commentors said that the customary and traditional use determinations in the proposed rule were incomplete. We have revised the determinations for fish and shellfish in this section to incorporate both the last Alaska Board of Fish customary and traditional use determinations that were in compliance with Title VIII (January 1990) and the determinations that the Board of Fish has made since 1990 where they might apply on Federal waters. For those determinations made by the Board of Fish since 1990, we have made a determination that eligibility for those fisheries should be limited to the residents of the area identified. These determinations are subject to revision through the annual consideration of proposed changes to Subpart C.

Subpart D—Subsistence Taking of Fish

____.26 Subsistence taking of fish

Numerous comments regarding customary and traditional use determinations and the taking of fish were received. Proposed changes to the existing subpart C and subpart D regulations will not be considered until the 2000–2001 regulations cycle. The commentors have been notified that their suggestions should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle.

A large number of comments dealt with the issue of customary trade. Many of the commentors felt that the sections dealing with customary trade in the Proposed Rule (§§ ____.26(c)(11) and (12)) were not specific enough, and would permit an expansion of subsistence fishing beyond current levels. Several suggested that this rule should define the term ''significant commercial enterprise'', including a specific dollar limit. Some said that no sale of subsistence-caught fish should be permitted, while others said that customary trade practices should be protected and that customary trade should include sales up to $70,000 per year. Several commentors suggested that decisions on customary trade should be made on a local level. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of ''significant commercial enterprise'' or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific proposals on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

Numerous commentors also said that the proposed rule did not always rely on the State's reporting areas, and were not always consistent with current State regulations. The majority of these comments came from the State of Alaska. When the proposed rule was published in December of 1997, it was structured to reflect all the State subsistence fishery regulations which were current at that time. Since then, the State Board of Fish has made changes to State regulations which resulted in the comments noted above. In order to address these concerns, we reviewed Subparts C and D with respect to fisheries and shellfish (particularly §§ ____.26 and 27). Changes were made in this Final Rule to make it consistent with current State regulations. There are a few specific regulations where this rule is not consistent with State regulations. These are areas where the courts have ruled or the Board has previously dealt with a fishery issue and made decisions which are not consistent with State regulations. These areas include: (1) the use of rod and reel for subsistence as a method of harvest, (2) the extension of salmon fisheries on Kodiak Island to 24 hours per day, (3) customary and traditional use determinations for rainbow trout in Southwest Alaska, and (4) regulations relating to the take of king crab around Kodiak Island.

Another commentor suggested the rule should clarify how the Federal subsistence management program will manage halibut, since the International Pacific Halibut Commission has halibut management responsibilities. Although most marine waters are excluded from these regulations, halibut and other marine resources in those marine waters identified in § ____.3 will be included within these regulations.

Many comments were received in regards to joint management whereby the Federal agencies determine the number of fish necessary to meet subsistence needs and monitor the take, while the State manages to meet these needs. While the Final Rule provides for management of fisheries in a manner consistent with the current Federal program, it does not preclude the adoption of other management scenarios. Sections ____10 and .14 give the Board broad authorities to cooperate with the State and other organizations in the implementation of the Federal Subsistence Management Program. Other commentors asked about the status of personal use fisheries in the Federal plan. Personal use fisheries are not provided for under ANILCA's Title VIII and are not addressed in these regulations. The State of Alaska manages personal use fisheries and comments or recommendations concerning those fisheries should be directed to the State. There were several comments in regards to the use of different types of equipment for subsistence use. Although the use of rod and reel is not permitted under State subsistence regulations, it is permitted under these regulations, since the Board has previously determined that rod and reel should be considered a traditional means of harvest. There are no requirements to purchase commercial equipment. One commentor wanted some provision made for the use of fish as bait in sport and commercial fisheries. Provisions regarding sport and commercial fisheries should be referred to the State which has management authority over these fisheries. Comments in regards to changing wording from ''unless permitted'' to ''unless prohibited'' for steelhead and rainbow trout were suggested. The

''unless permitted'' wording is consistent with State regulations. One commentor suggested dropping bag limits for rod and reel. Bag limits are reasonable regulations for conservation of fish stocks and are authorized and consistent with ANILCA, Section 814.

One commentor said in that Southeast Alaska the harvest of subsistence fish should be permitted at any time. Another commentor said that there should be no requirement for permits, seasons or bag limits for subsistence harvest, since ANILCA did not specifically mention any of those items. The subsistence priority of ANILCA is a priority over other consumptive uses, but that opportunity does not mean that subsistence harvest should be free from all regulation. ANILCA stipulates that subsistence harvest should not threaten the conservation of healthy populations of fish or wildlife. Regulations such as permits, seasons and bag limits, are considered a necessary and reasonable restriction of subsistence harvest.

One commentor said that genetic studies should be completed in the Area M fishery and associated destination drainages before there is a serious problem. Area M is not within the area of Federal jurisdiction. However, the Federal Subsistence Board will work closely with the State of Alaska, Native organizations, fishing groups and others to assure that necessary biological and harvest information is obtained.

A number of comments dealt with permit possession and record keeping. Current regulations require on-person possession of permits. In addition, permits and daily records will be required when important for collection of specific data to ensure adequate management and to provide biological data for emergency management decisions. One commentor noted that subsection (f) allows Federally qualified users to remove fish from their commercial catch for subsistence purposes which conflicts with State commercial fishing regulations. This provision is consistent with State regulations and will be retained. Another commentor noted that the proposed regulations do not contain measures to conserve chum salmon in times of shortage as provided in State regulations and will hinder efforts to conserve chum salmon in times of shortage. All fisheries will be managed for healthy populations as provided for in ANILCA Section 802(1). The request for fish habitat enhancement for the Yukon Flats area should be directed to the local land manager who has responsibility for these activities.

____.27 Subsistence Taking of Shellfish

One commentor requested that the Federal program also cover sea cucumbers, abalone, and sea urchins. Management of these species can occur under current regulations and the Federal program may include them where it has marine jurisdiction.

One commentor opposed having to purchase a license to dig clams. Licenses are not required although permits may be required in some areas for resource management purposes. Another commentor stated that State and Federal requirements for king crab pots differ. This difference occurs only in the Kodiak Island area and results from the Federal Subsistence Board instituting regulations a number of years ago to protect king crab populations in that area.

Summary of Changes

Based on our analysis of comments, we have made the following revisions from the Proposed Rule:

Throughout the document, we have made editing and wording changes to comply with the Executive Memorandum on Plain Language in Government Writing.

§ ____.3(b)—Jurisdiction over inland waters on Forest Service lands has been modified to be consistent with the jurisdictional approach used on Department of the Interior lands. We have also more clearly identified the waters in which the Federal government will manage subsistence fisheries.

§ ____.24(a)(2)—We have revised the determinations for fish and shellfish in this section to incorporate both the past Alaska Board of Fish customary and traditional use determinations that were in compliance with Title VIII (January 1990) and the determinations that the Board of Fish has made since 1990 where they apply on Federal waters and are consistent with Title VIII of ANILCA.

§§ ____.26 and .27—We have made minor wording changes to the regulations on customary trade (§ ____.26(c)(11–12)), but have retained the intent found in the Proposed Rule to provide for ongoing customary trade practices. We have made numerous revisions to assure consistency with the current State subsistence fisheries and shellfish regulations. In order to reduce confusion, we have also eliminated regulations covering areas where there is no Federal jurisdiction.

We must emphasize that these regulations ONLY APPLY TO FEDERAL LANDS AND WATERS where there is a Federal interest. Individuals who do not meet the requirements under these regulations may still harvest fish and wildlife on Federal lands and waters in accordance with other State fishing and hunting regulations, except in those instances where Federal lands or waters have been specifically closed to non-Federally qualified subsistence users.

Nothing in this Final Rule is intended to change the underlying rural priority which is set out in Title VIII of ANILCA or otherwise amend the statuatory basis of the Federal Subsistence Management Program. Although many sections of these regulations are not being amended other than to make them conform to requirements for plain language, for the purpose of clarity and ease of understanding, the entire text of the rule for subparts A, B, and C, and sections ____.26, and ____.27 of subpart D is being printed. The unpublished section (Section ____.25) relates to wildlife regulations that are revised annually. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as

identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under ''For Further Information Contact.'' The Secretary of the Interior with the concurrence of the Secretary of Agriculture has determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly effecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the Final Rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection requirements are a revision of the collection requirements already approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires 5/31/2000. This revision was submitted to OMB for approval. A comment period was open on OMB collection requirements and no comments were received.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The collection of information under this Final Rule will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503.

Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § ____.24 Customary and traditional determinations.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this Final Rule does not restrict any existing sport or commercial fishery on the

public lands and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million in food value statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*) requires that before a rule can take effect, copies of the rule and other documents must be sent to the U.S. House and U.S. Senate and establishes a means for Congress to disapprove the rulemaking. The Departments have determined that this rulemaking is not a major rule under the Act, and thus the effective date of the rule is not additionally delayed unless Congress takes additional action.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any state or local entities or tribal governments.

The Secretaries have determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Drafting Information—These regulations were drafted by William Knauer, Bob Gerhard, and Victor Starostka under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Curt Wilson, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

Subpart B—Program Structure

Subpart C—Board Determinations

Subpart A—General Provisions

§ ____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ ____.2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

§ ____.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency specific regulations.

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on

these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

(1) Alaska Maritime National Wildlife Refuge;

(2) Alaska Peninsula National Wildlife Refuge;

(3) Aniakchak National Monument and Preserve;

(4) Arctic National Wildlife Refuge;

(5) Becharof National Wildlife Refuge;

(6) Bering Land Bridge National Preserve;

(7) Cape Krusenstern National Monument;

(8) Chugach National Forest, excluding marine waters;

(9) Denali National Preserve and the 1980 additions to Denali National Park;

(10) Gates of the Arctic National Park and Preserve;

(11) Glacier Bay National Preserve;

(12) Innoko National Wildlife Refuge;

(13) Izembek National Wildlife Refuge;

(14) Katmai National Preserve;

(15) Kanuti National Wildlife Refuge;

(16) Kenai National Wildlife Refuge;

(17) Kobuk Valley National Park;

(18) Kodiak National Wildlife Refuge;

(19) Koyukuk National Wildlife Refuge;

(20) Lake Clark National Park and Preserve;

(21) National Petroleum Reserve in Alaska;

(22) Noatak National Preserve;

(23) Nowitna National Wildlife Refuge;

(24) Selawik National Wildlife Refuge;

(25) Steese National Conservation Area;

(26) Tetlin National Wildlife Refuge;

(27) Togiak National Wildlife Refuge;

(28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;

(29) White Mountain National Recreation Area;

(30) Wrangell-St. Elias National Park and Preserve;

(31) Yukon-Charley Rivers National Preserve;

(32) Yukon Delta National Wildlife Refuge;

(33) Yukon Flats National Wildlife Refuge;

(34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ ___.4 Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371 (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Area, District, Subdistrict, and *Section* mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § ____.10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary trade means cash sale of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

FACA means the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1–15).

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal Advisory Committees or *Federal Advisory Committee* means the Federal Local Advisory Committees as described in § ____.12.

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Marine Waters means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust or society.

Public lands or *public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq., which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or *Regional Council* means the Regional Advisory Councils as described in § ____.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § ____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ ____.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in § ____.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § ____.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g. ''no determination''), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13.

§ ____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be a rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags or other documents required by this section. If you are engaged in taking fish and wildlife under these regulations, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(c) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(d) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that

community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of these regulations. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

§ ____.7 Restriction on use.

(a) You may not trade or sell fish and wildlife, taken pursuant to the regulations in this part, except as provided for in §§ ____.25, ____.26, and ____.27.

(b) You may not use, sell, or trade fish and wildlife, taken pursuant to the regulations in this part, in any significant commercial enterprise.

§ ____.8 Penalties.

If you are convicted of violating any provision of 50 CFR Part 100 or 36 CFR Part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ ____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section ____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § ____.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § ____.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section ____.20, Request for reconsideration. The information collection requirements contained in § ____.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than one hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ ____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility for, administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) Membership. (1) The voting members of the Board are: a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for

subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of a member from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils. (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§ ___.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a one year term and may be reelected.

(c) Powers and Duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under these regulations within the region;

(iv) Provide a forum for the expression of opinions and

recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § __.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§ ____.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § __.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§ ____.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§ ____.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§ ____.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;
(iv) Transportation; and
(v) Educational institutions.
(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § ____.23.

§ ____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § ____.24.

§ ____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b) (1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§ ____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various parts of subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the **Federal Register**.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted within the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the **Federal Register**. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR Part 14.

§ ____.19 Closures and other special actions.

(a) The Board may make or direct restriction, closure, or opening for the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) After consulting with the State of Alaska, providing adequate notice to the public, and holding at least one public hearing in the vicinity of the affected communities, the Board may make or direct temporary openings or closures to subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(c) In an emergency situation, the Board may direct immediate openings or closures related to subsistence or non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. The Board shall publish notice and reasons justifying the emergency closure in the **Federal Register** and in newspapers of any area affected. The emergency closure shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and hearing, that such closure should be extended.

(d) The Board may make or direct a temporary change to open or adjust the seasons or to increase the bag limits for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons or bag limits. Prior to implementing a temporary change, the Board shall consult with the State, shall comply with the provisions of 5 U.S.C. 551–559 (Administrative Procedure Act or APA), and shall provide adequate notice and opportunity to comment. The length of any temporary change shall be confined to the minimum time period or bag limit determined by the Board to be necessary to satisfy subsistence uses. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

(e) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(f) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

§ ____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. You must include the following information in your request for reconsideration:

(1) Your name, and mailing address;

(2) The action which you request be reconsidered and the date of **Federal Register** publication of that action;

(3) A detailed statement of how you are adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;

(5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ ____.21 [Reserved]

Subpart C—Board Determinations

§ ____.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

(1) Southeast Region;
(2) Southcentral Region;
(3) Kodiak/Aleutians Region;
(4) Bristol Bay Region;
(5) Yukon-Kuskokwim Delta Region;
(6) Western Interior Region;
(7) Seward Peninsula Region;
(8) Northwest Arctic Region;
(9) Eastern Interior Region;
(10) North Slope Region.

(b) You may obtain maps delineating the boundaries of subsistence resources regions from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ ____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § ____.15 except the following:

Adak;
Fairbanks North Star Borough;
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;
Juneau area—including Juneau, West Juneau and Douglas;
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;

Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island;

Municipality of Anchorage;

Seward area—including Seward and Moose Pass;

Valdez; and

Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(b) You may obtain maps delineating the boundaries of non-rural areas from the U.S. Fish and Wildlife Service at the address in § ____.22(b).

§ ____.24 Customary and traditional use determinations.

(a) The Board has determined that rural Alaska residents of the listed communities and areas have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Rural residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B)	Moose	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Rural residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6	Moose	No Federal subsistence priority.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown BearNo Federal subsistence priority..	
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay.	Moose	Residents of Chenega Bay and Tatitlek.
7, Remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A), (C) and (D)	Brown Bear	No Federal subsistence priority.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.

Area	Species	Determination
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Units 9(B), 9(C) and 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10, Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11	Brown Bear	No Federal subsistence priority.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A)–(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cuttoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake.
12	Caribou	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No Federal subsistence priority.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters)
13(D)	Goat	No Federal subsistence priority.
13(A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.

Area	Species	Determination
13(E)	Moose	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.

Area	Species	Determination
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A)	Brown Bear	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.

Area	Species	Determination
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Units 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Sheldon Point, and Alakanuk.
22, Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.

Area	Species	Determination
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish determinations.

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA.	All fish	Residents of the Norton Sound-Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River drainage	Salmon, other than Yukon River Fall Chum salmon.	Residents of the Yukon Area, including the community of Stebbins.
Yukon River drainage	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish species (other than salmon), including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon-Northern Area.
Remainder	All fish	Residents of the Northern Area, except for those domiciled in Unit 26–B.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area.

Area	Species	Determination
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA:		
Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
PRINCE WILLIAM SOUND AREA:		
South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Glennallen Subdistrict of the Upper Copper River District and the waters of the Copper River.	Salmon	Residents of the Prince William Sound Area.
Copper River District—remainder.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.

Area	Species	Determination
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long. and east of 132° 25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.

(3) Shellfish determinations.

Area	Species	Determination
BERING SEA AREA	All shellfish	Residents of the Bering Sea Area.
ALASKA PENINSULA-ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab	Residents of the Alaska Peninsula-Aleutian Islands Area.
KODIAK AREA	Shrimp, Dungeness, and Tanner crab	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
PRINCE WILLIAM SOUND AREA	Shrimp, clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA:		
Section 1–E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.

Area	Species	Determination
Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 3–A and 3–B	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

Subpart D—Subsistence Taking of Fish and Wildlife

3. In subpart D, revise §§ ____.26 and ____.27 of 36 CFR part 242 and 50 CFR part 100 to read as follows:

§ ____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § ____.27:

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Cast net means a circular net with a mesh size of no more than one and one-half inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment, a tethered, umbilical, surface-supplied, or snorkel.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish which is driven by river current or other means.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the fish are preserved. A fish, when landed and killed becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Household means a person or persons having the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hydraulic clam digger means a device using water or a combination of air and water to remove clams from their environment.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of

boats in any particular regulatory area, district or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes.*

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for traveling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than four feet, equipped with projecting prongs used to gather sea urchins.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under five-pound weight.

Subsistence fishing permit means a permit issued by the Alaska Department of Fish and Game, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) Methods, means, and general restrictions. (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A ring net;
(xi) A longline;
(xii) A fyke net;
(xiii) A lead;
(xiv) A herring pound;
(xv) A dip net;
(xvi) Jigging gear;
(xvii) A mechanical jigging machine;
(xviii) A handline;
(xix) A shovel;
(xx) A mechanical clam digger;
(xxi) A hydraulic clam digger;
(xxii) An abalone iron;
(xxiii) A scallop dredge;
(xxiv) A grappling hook;
(xxv) A sea urchin rake;
(xxvi) Diving gear;
(xxvii) A cast net;
(xxviii) A handline;
(xxix) A rod and reel; and
(xxx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of six inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within six inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with (i) of this paragraph, satisfy the following: a sidewall, which

may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least six inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within six inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) You may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses. You may not obstruct more than one-half the width of any stream with any stationary fishing.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow trout or steelhead trout.

(15) You may not use as bait for commercial or sport fishing purposes fish taken for subsistence use or under subsistence regulations.

(16) You may not accumulate harvest limits authorized in this section or § ____.27 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possessions limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) If you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident,

sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not subsistence fish for char from June 1 through September 20, in the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and in the Kelly River from its mouth to ¼ mile upstream.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, you may take fish at any time except as specified by emergency regulation.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency regulations.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You may take fish for subsistence purposes without a subsistence fishing permit except that a subsistence fishing permit is required in the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take salmon in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon only during the open weekly fishing periods of the commercial salmon fishing season and may not take them for 24 hours before the opening of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk River drainage;

(B) in Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period.

(vii) In Subdistrict 4–A after the opening of the commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period; however, you may take king salmon during the commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) In the upper Yukon River drainage, you may not subsistence fish in Birch Creek and waters within 500 feet of its mouth, except that you may take whitefish and suckers under the authority of a subsistence fishing permit.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks; and (D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(x) You may not subsistence fish in the Delta River.

(xi) You may not subsistence fish in the following rivers and creeks and within 500 feet of their mouths: Big Salt River, Hess Creek, and Beaver Creek.

(xii) You may not subsistence fish in the Deadman, Jan, Fielding, and Two-Mile Lakes.

(xiii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiv) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xvi) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point four miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(xviii) During the commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(xix) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xx) Except as provided in this section, you may take fish for subsistence purposes without a subsistence fishing permit.

(xxi) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) For whitefish and suckers in Birch Creek and within 500 feet of its mouth;

(D) For the Tanana River drainage above the mouth of the Wood River.

(xxii) Only one subsistence fishing permit will be issued to each household per year.

(xxiii) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxiv) If you are a commercial salmon fisherman who is registered for District 1, 2, or 3, you may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, rod and reel, or jigging through the ice;

(B) You may not use gillnets for taking rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon as follows:

(A) By spear in the Togiak River excluding its tributaries;

(B) From August 30 through September 30, by spear, dip net, and gillnet along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by ADF&G regulatory markers;

(C) From August 15 through September 15, by spear, dip net, and gillnet at Johnny's Lake on the northwestern side of Naknek Lake;

(D) From October 1 through November 15, by spear, dip net, and gillnet at the mouth of Brooks River at Naknek Lake;

(E) At locations and times specified in paragraphs (i)(5)(vii) (B) through (D) of this section, gillnets may not exceed five fathoms in length and may not be anchored or tied to a stake or peg, and you must be present at the net while fishing the net.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik, River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) After August 20, you may not possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amilia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the ''Bishop's House'' at 53°52.64′ N. lat., 166°32.30′ W. long. to a point on Amaknak Island at 53°52.82′ N. lat., 166°32.13′ W. long., and north of line from a point south of Agnes Beach at 53°52.28′ N. lat., 166°32.68′ W. long. to a point at 53°52.35′ N. lat., 166°32.95′ W. long. on Amaknak Island;

(B) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(C) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(D) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout and char only under the terms of a subsistence fishing permit, except that you do not require a permit in the Akutan, Umnak and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. No person may possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow trout and steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. No person may possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10′ N. lat.), west of 150° W. long., north of 55°30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20.22′ W. long.).

(i) You may take fish, other than salmon, rainbow trout and steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) All waters closed to commercial salmon fishing in the Chiniak Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(B) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(C) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You

must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must keep a record of the number of subsistence fish taken each year. You must record on the reverse side of the permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51′06″ N. lat.) and a line extending south from Cape Fairfield (148°50′15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Cook Inlet Area. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may not take salmon, Dolly Varden, trout, grayling, char, and burbot for subsistence purposes.

(iii) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and two inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) You may not take salmon in the Chitina Subdistrict.

(iii) You may take salmon, other than chinook salmon, in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G and under the following conditions:

(A) You may take salmon only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels and dip nets on the Copper River and only dip nets and spears in Tanada Creek;

(C) You may take salmon only from June 1 through September 1 or until the season is closed by emergency regulation; fishing periods are to be established by emergency regulation and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(D) You must release chinook salmon to the water unharmed; you must equip your fish wheel with a livebox or monitor it at all times;

(E) You must return the permit no later than September 30.

(iv) You may take salmon for subsistence purposes with no bag or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length, except that you may take pink salmon only in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no bag or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length with a maximum mesh size of six and one-quarter inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Eastern District, seven days per week during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until October 31, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(vi) If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(vii) You may take herring spawn on kelp for subsistence purposes from above water from March 15 through June 15 and underwater using dive gear only during open periods for the wild herring spawn-on-kelp commercial fishery.

(viii) You may not take salmon in the tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District.

(ix) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(x) You may take salmon only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets; and

(B) In salt water by gillnets and seines.

(xi) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G. Your registration number and name and address must be permanently affixed and plainly visible on the fish

wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. A wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xii) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xiii) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xiv) You may take herring spawn on kelp only by a hand-held unpowered blade-cutting device. You must cut kelp plant blades at least four inches above the stipe (stem). The provisions of this paragraph do not apply to Fucus species.

(xv) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xvi) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

(xvii) Only one subsistence fishing permit will be issued to each household per year.

(xviii) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(D) If your household has a Chitina Subdistrict personal use salmon fishing permit, you will not be issued a Copper River subsistence salmon fishing permit;

(E) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(F) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(G) A permit holder must record on ADF&G forms all salmon taken immediately after landing the salmon.

(xix) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) For a household with one person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with two persons, 60 salmon, of which no more than five may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with one person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xx) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xx):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the department when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xxi) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xxii) In locations open to commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(xxiii) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, steelhead trout in the Situk and Ahrnklin Rivers, other trout and char only under authority of a subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, in the Southeastern Alaska Area at any time.

(ii) You may take herring at any time, except that in the 72 hours before and 72 hours after an open commercial herring fishing period in the Southeastern Alaska Area, a vessel that, or crew member or permit holder who, participates in that commercial herring fishery opening may not take or possess herring in any district in the Southeastern Alaska Area.

(iii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) You must possess a subsistence fishing permit to take salmon, trout, or char.

(v) Permits will not be issued for the taking of chinook or coho salmon, but if you take chinook or coho salmon incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any chinook or coho salmon taken in this manner on your permit calendar.

(vi) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka

(viii) You shall immediately remove the pelvic fins of all salmon when taken.

(ix) You may not possess subsistence-taken and sport-taken salmon on the same day.

§ ____.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § ____.26 or this section.

(c) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, you may use gear as specified in the definitions of § ____.26 for subsistence taking of shellfish.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § ____.26.

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(d) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(e) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence shellfishing regulations this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information as may be required for management or conservation purposes;

(6) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the

mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(g) You may not take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive or barter shellfish or their parts taken in violation of Federal or State regulations.

(i)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this chapter, unless:

(i) the shellfish has been taken with gear deployed and retrieved by the client or guest;

(ii) the gear has been marked with the client's or guest's name and address; and

(iii) the shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(j) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters under jurisdiction for Federal subsistence management.

(2) *Prince William Sound Area.* No marine waters under jurisdiction for Federal subsistence management.

(3) *Cook Inlet Area.* You may not take shellfish for subsistence purposes.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width five and one-half inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crab.

Dated: December 22, 1998.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

Dated: December 18, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–11 Filed 1–5–99; 8:45 am]

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Federal Register

Friday
January 8, 1999

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Rule and Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01 ; I.D. 121498A]

RIN 0648–AM12

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

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

ACTION: 1999 groundfish fishery specifications and management measures; partial disapproval of open access *Sebastes* monthly cumulative limit; request for comments.

SUMMARY: NMFS announces the 1999 fishery specifications and management measures for groundfish, with the exception of whiting, taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the levels of the acceptable biological catch (ABC) and optimum yields (OYs), including the distribution between domestic and foreign fishing operations. The commercial OYs (formerly called ''harvest guidelines,'' ''HGs,'' or quotas) are allocated between the limited entry and open access fisheries. The management measures for 1999 are designed to keep landings within the OYs for those species for which there are OYs, and to achieve the goals and objectives of the FMP and its implementing regulations. The intended effect of these actions is to establish allowable harvest levels of Pacific Coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels, while extending fishing and processing opportunities as long as possible during the year. NMFS also announces partial disapproval of a particular open access monthly cumulative limit for *Sebastes* complex species.

DATES: Effective 0001 hours (local time) January 1, 1999, until the 2000 annual specifications and management measures are effective, unless modified, superseded, or rescinded. The 2000 annual specifications and management measures will be published in the **Federal Register**. Comments on the 1999 annual specifications and management measures will be accepted until February 8, 1999.

ADDRESSES: Send comments on these specifications and management measures to Mr. William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Mr. William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these specifications and management measures, which includes an environmental assessment (EA) and the stock assessment and fishery evaluation (SAFE) report, has been compiled in aggregate form and is available for public review during business hours at the offices of the NMFS Northwest Regional Administrator and at the office of the NMFS Southwest Regional Administrator, or may be obtained from the Pacific Fishery Management Council (Council), by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Lawrence Six at 503–326–6352.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140; or James Morgan (Southwest Region, NMFS) 562–980–4000.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that OYs be specified for species or species groups in need of additional protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. This action announces and makes effective the final 1999 fishery specifications and the management measures designed to achieve them for all groundfish managed under the FMP except whiting (see proposed rule section of this **Federal Register** issue for preliminary ABC/OY specifications and proposed allocation of OY to Washington coastal tribal fisheries). These final specifications and measures were considered by the Council at two meetings and were recommended to NMFS by the Council at its November 1998 meeting in Portland, OR.

I. Final Specifications

The fishery specifications include ABCs, the designation of OYs, which may be represented by harvest guidelines (HGs) or quotas for species that need individual management, the apportionment of the OYs between domestic and foreign fisheries, and allocation of the commercial OYs between the open access and limited entry segments of the domestic fishery. As in the past, these specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was amended in 1996 by Public Law 94–265. The Council has submitted Amendment 11 to the FMP which, if approved, will make the FMP consistent with the 1996 Magnuson-Stevens Act amendments. The decision regarding approval or disapproval of Amendment 11 is expected in spring 1999. The provisions in Amendment 11 for setting OYs are, for the most part, more conservative than in the current FMP. The OYs and ABCs recommended by the Council and announced in this document are intended to be consistent with the Magnuson-Stevens Act, the existing groundfish FMP, and Amendment 11.

BILLING CODE 3510–22–P

Table 1. 1999 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs) (equivalent to Harvest Guidelines (HGs) in 1998), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) areas (in metric tons).

	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (called Harvest Guideline (HG) in 1998)		Commercial OY (total catch)	Allocations (total catch HGs)			
Species	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch ABC	Total Catch	Landed Equivalent		Limited Entry		Open Access	
										mt	%	mt	%
ROUNDFISH:													
Lingcod a/b/	450 U.S.		139	325	46	960	730	666	419	339	80.9	80	19.1
Pacific cod	3,200		c/			3,200	--	--	--	--	--	--	--
Pacific whiting a/d/	178,000-232,000 U.S. only					178,000-232,000	178,000-232,000	--	--	--	--	--	--
Sablefish e/	9,692				472	9,692 N	7,919 N	7,127	6,414 N	5,991	93.4	423	6.6
						472 S	472 S	425	425 S	--	--	--	--
(Jack mackerel f/)	(52,600)			--		(52,600)	(52,600)	(52,600)	--	--	--	--	--
FLATFISH:													
Dover sole g/	8,373				1,053	9,426	9,426	8,955	9,426	--	--	--	--
English sole	2,000		1,100			3,100	--	--	--	--	--	--	--
Petrale sole	1,200		500	800	200	2,700	--	--	--	--	--	--	--
Arrowtooth flounder	5,800					5,800	--	--	--	--	--	--	--
Other flatfish	700	3,000	1,700	1,800	500	7,700	--	--	--	--	--	--	--
ROCKFISH:													
Chilipepper h/	c/		3,724			3,724	3,724	3,724	3,651	2,461	67.4	1,190	32.6
POP i/	695		q/			695	595	500	595	--	--	--	--
Shortbelly	23,500					23,500	23,500	23,500	23,500	--	--	--	--
Splitnose j/	q/		868			868	868	729	868	--	--	--	--
Widow k/	5,750					5,750	5,023	3,962	4,981	4,797	96.3	184	3.7
Thornyheads: l/													--
Shortspine m/	1,261				175 -	1,261 N	1,150 N	805 N	1,150	1,147	99.75	3	0.25
						175 S	175 S	123 S	175	--	--	--	--
Longspine n/	4,102				429 -	4,102 N	4,102 N	3,733	4,102	--	--	--	--
						429 S	429 S	390 S	429	--	--	--	--

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (called Harvest Guideline (HG) in 1998)		Commercial OY (total catch)	Allocations (total catch HGs)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch ABC	Total Catch	Landed Equivalent		Limited Entry		Open Access	
										mt	%	mt	%
Sebastes complex: a/o/	8,647		4,731			8,647 N	6,617	5,421	5,785	5,230	90.4N	555	9.6N
						4,731 S	2,705	2,705	1,396	941	67.4S	455	32.6S
Bocaccio-S p/	q/✓		230 *			230	230	230	150	101	67.4	49	32.6
Canary-N r/	1,045 *		q/			1,045	857	689	807	736	91.2	71	8.80
Yellowtail-N a/s/	3,465 U.S. *		q/			3,465	3,435	2,407	3,403	3,076	90.4	327	9.6
REMAINING ROCKFISH q/:	2,295 *		898 *			--	--	--	--	--	--	--	--
bank	c/		81 ✓			81	--	--	--	--	--	--	--
blackgill t/	c/				365 ✓	365	--	--	--	--	--	--	--
bocaccio-N	424 ✓		u/			424	--	--	--	--	--	--	--
canary-S	u/		85 ✓			85	--	--	--	--	--	--	--
darkblotched	209 ✓		47 ✓			256	--	--	--	--	--	--	--
POP-S	u/		20 ✓			20	--	--	--	--	--	--	--
redstripe	768 ✓		c/			768	--	--	--	--	--	--	--
sharpchin	398 ✓		71 ✓			469	--	--	--	--	--	--	--
silvergrey	51 ✓		c/			51	--	--	--	--	--	--	--
splitnose	274 ✓		u/			274	--	--	--	--	--	--	--
yelloweye	39 ✓		c/			39	--	--	--	--	--	--	--
yellowmouth	132 ✓		c/			132	--	--	--	--	--	--	--
yellowtail-S	u/		74 ✓	155 ✓		229	--	--	--	--	--	--	--
Other rockfish v/	1,842 *		3,603 *			--	--	--	--	--	--	--	--
OTHER FISH w/	2,500	7,000	1,200	2,000	2,000	14,700	--	--	--	--	--	--	--

a/ U.S. Vancouver only, even if stock assessments included parts of Canadian waters.

b/ Lingcod. The 419-mt commercial OY for lingcod is in terms of total catch and is derived by reducing the 730-mt OY by 310 mt for the recreational fishery and 1 mt for the treaty tribes. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 339 mt (total catch) is reduced by 19% (64 mt) to derive a landed catch equivalent of 275 mt. Discard estimates for the open access fishery are not available at this time. The 666-mt landed catch equivalent for OY is the sum of the recreational and tribal catch (311 mt) plus the landed catch equivalents for the limited entry (275 mt) and open access fisheries (80 mt).

c/ Other. These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "other rockfish" category for the areas footnoted only.

d/ Pacific whiting. Preliminary ABC and OY. Assumes 80% of U.S. plus Canada biomass occurs in U.S. waters.

e/ Sablefish north of 36° N. lat. The landed catch equivalent for the 7,919 mt OY is 7,127 mt, and assumes that 10 percent (792 mt)

of the OY is discarded. Ten percent (713 mt) of the landed catch equivalent is set aside for the treaty tribes. The remaining 6,414 mt is the "commercial OY," which is divided between the limited entry (5,991 mt) and open-access (423 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,475 mt) to the trawl fishery, and 42 percent (2,516 mt) to the nontrawl fishery. The allocations are harvest guidelines.

f/ Jack mackerel north of 39°00' N. lat. The ABC and OY include waters beyond 200 nm.

g/ Dover sole. The 8,955-mt landed catch equivalent for OY assumes that 5 percent of the total catch is discarded.

h/ Chilipepper. Chilipepper in the Eureka, Monterey, and Conception areas is pulled out of the Sebastes complex in 1999, and for the first time, an OY (and limited entry and open access allocations) is specified for chilipepper. The 3,651-mt commercial OY for chilipepper is in terms of total catch and is derived by reducing the 3,724-mt OY by 73 mt for the recreational fishery. The open access allocation is determined by by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. Zero discards are assumed in the limited entry and open access fisheries, so the limited entry and open access allocations also represent the landed catch equivalents.

i/ Pacific ocean perch. The 500-mt landed catch equivalent for OY assumes that 16 percent of the total catch is discarded.

j/ Splitnose rockfish. Splitnose rockfish also have been removed from the Sebastes complex in the Eureka, Monterey, and Conception areas. The 729-mt landed catch equivalent for OY assumes that 16 percent of the total catch is discarded.

k/ Widow rockfish. The 4,981-mt commercial OY for widow rockfish is in terms of total catch and is derived by reducing the 5,023-mt OY by 42 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 4,797 mt (total catch) is reduced by 300 mt for estimated bycatch in the offshore whiting fishery, and the remainder is reduced by 16% (719 mt) to derive a landed catch equivalent of 3,777 mt. Discard estimates for the open access fishery are not available at this time. The 3,962-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (3,777 mt) and open access fisheries (184 mt), but excludes recreational landings of 42 mt.

l/ Thornyheads. The treaty tribes estimate that 8,000-10,000 lb (about 3-4 mt) of thornyheads will be taken in 1998 under a tribal trip limit of 300 lb per trip. This small amount is not subtracted from either of the thornyhead HGs at this time. There is no combined HG for both species in 1998.

m/ Shortspine thornyheads. The commercial OY for shortspine thornyheads equals the OY. The open access allocation for shortspine thornyheads is determined by applying the open access percentage to the 1,150-mt commercial OY. The limited entry allocation is determined by subtracting the open access allocation (3 mt) from the commercial OY. The limited entry allocation of 1,147 mt (total catch) is reduced by 30% (344 mt) to derive a landed catch equivalent of 803 mt. The 805-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (803 mt) and open access fisheries (3 mt)(with a slight difference due to rounding).

n/ Longspine thornyheads. The 4,102-mt landed catch equivalent for OY assumes that 9% of the total catch is discarded.

o/ Sebastes complex. The Sebastes-north ABC of 8,647 mt is the sum of the ABCs for canary, yellowtail, "remaining rockfish," and "other rockfish" in the U.S. Vancouver and Columbia areas (marked with *). All Sebastes OYs are for total catch. Species in "remaining rockfish" are marked with ✓. There may be some discrepancies with other tables due to rounding.

The Sebastes-north OY of 6,617 mt (for the Vancouver-Columbia area) is the sum of 75% of the ABC for "remaining rockfish" excluding bocaccio (.75 x (2,295-424)) = 1,403 mt)plus 50% of the ABCs for "other rockfish" (.5 x 1,842 = 921 mt) plus the OYs for canary (857 mt) and yellowtail rockfish (3,435 mt). The reductions in the contributions of remaining and other rockfish is intended to address uncertainty in stock status due to limited information. Bocaccio is not included because the fishery will be managed so as to minimize harvest of this species.

Within the Sebastes-north OY are two small HGs for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 lb (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), which totals 13.6 mt. The northern OY for the Sebastes complex is reduced by 13.6 mt for tribal fisheries and 818 mt for estimated recreational harvest to derive the 5,785 mt commercial OY.

The Sebastes-south ABC is the sum of the ABCs for bocaccio, "remaining rockfish," and "other rockfish" in the Eureka, Monterey, and Conception areas (marked with *). There may be some discrepancies with other tables due to rounding.

The Sebastes-south OY, which applies to the Eureka/Monterey/Conception area, is the OY for bocaccio (230 mt) plus the sum of 75% of the ABC for remaining rockfish (.75 x 898) plus 50% of the ABC for other rockfish (.5 x 3,603 = 1,801 mt). The reductions in the contributions of remaining and other rockfish is intended to address uncertainty in stock status due to limited information.

p/ Bocaccio. The 150-mt commercial OY for bocaccio in the Eureka, Monterey, and Conception area is in terms of total catch and is derived by reducing the 230-mt OY by 80 mt for the recreational fishery. No discards are assumed at this time.

q/ Remaining rockfish. Prior to 1997, this category included all species in the Sebastes complex that did not have an individual ABC, and therefore included species that, starting in 1997, are designated as "other rockfish." Since 1997, "remaining rockfish" includes only those species and areas listed in Table 1. Species included in "remaining rockfish" are marked with ✓.

r/ Canary. The 807-mt commercial OY for canary rockfish in the Vancouver-Columbia area is in terms of total catch and is derived by reducing the 1,045-mt OY by 50 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 736 mt (total catch) is reduced by a 16% (118 mt) discard estimate to derive a landed catch equivalent of 618 mt. Discard estimates for the open access fishery are not available at this time. The 689-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (618 mt) and open access fisheries (71 mt).

s/ Yellowtail rockfish. The 3,403-mt commercial OY for yellowtail rockfish is in terms of total catch and is derived by reducing the 3,435-mt OY by 32 mt for the recreational fishery. The open access allocation is determined by by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 3,076 mt (total catch) is reduced by 600 mt for estimated bycatch in the offshore whiting fishery, and the remainder is reduced by 16% (396 mt) to derive a landed catch equivalent of 2,080 mt. Discard estimates for the open access fishery are not available at this time. The 2,407-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (2,080 mt) and open access fisheries (327 mt).

t/ Blackgill rockfish. This stock is moved from "other rockfish" to "remaining rockfish," both components of the Sebastes complex. A separate ABC is established for the first time in 1999 for blackgill rockfish, resulting in a 365-mt which therefore reduces the ABC for "other rockfish" by 365 mt and increases it by the same amount for "remaining rockfish."

u/ There is a separate ABC for this species and area which is not included in "remaining rockfish" or "other rockfish," and therefore is not included in the Sebastes complex.

v/ Other rockfish. "Other rockfish" includes offshore Sebastes species not identified in Table 1. It is based on the 1996 Sebastes complex assessment of commercial landings and includes updated estimates of recreational landings for those species without individual ABCs.

w/ Other fish. Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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ABC Policy/Overfishing

The current FMP defines overfishing as the fishing mortality rate (F) that would reduce spawning potential to 20 percent of the unfished level. This is referred to as a F20 rate. The Council has a policy of setting the ABC according to a constant fishing mortality rate that would approximate maximum sustainable yield (MSY). This rate has typically been F35, so is more conservative than the F20 overfishing rate. Under the revised Magnuson-Stevens Act, the FMP must prevent overfishing, which is defined in the National Standard Guidelines (63 FR 24212, May 1, 1998) as exceeding the fishing mortality rate needed to produce the maximum sustainable yield (Fmsy). Therefore the 1999 ABCs equal, but do not exceed Fmsy, as exceeding Fmsy would constitute overfishing. This new approach is more conservative and less flexible than allowed by the current FMP.

In 1999, the Council continued its use of default harvest rates as a proxy for Fmsy (and thus for ABC). In most cases, the default Fmsy proxy is F40 for rockfish and F35 for other groundfish species, but it may be superseded based on better scientific information. (The thornyhead ABCs are currently based on F35, although they are included as rockfish in the definitions at 50 CFR 660.302.) ''F40'' means the fishing mortality rate that reduces the spawning potential per recruit to 40 percent of the unfished condition. For faster growing stocks, or stocks with quicker recruitment, a higher fishing mortality rate may be used, such as F35, which reduces the spawning potential to 35 percent of the unfished condition, and therefore means higher catches than F40. Under this policy, MSY is a constant fishing mortality rate (i.e., exploitation rate) that is a limit. In other words, a constant fraction of the stock may be harvested each year. The ABC for a species generally is derived by multiplying the exploitation rate (F40 or F35) times the current biomass estimate.

Figure 1 (in the following section on the default OY policy) illustrates the relationship between current biomass levels and recommended catch. The default exploitation rate (F35 or F40) is represented by the line labeled ''ABC.'' ABC is graphically determined by finding the current biomass level on the horizontal axis, then finding the corresponding point on the line labeled ABC, and then reading the corresponding catch off the vertical axis.

The 1999 ABCs, which are based on the best available scientific information, represent the total fishing mortality (in most cases synonymous with total catch). Stock assessment information considered in determining the ABCs is available from the Council and was made available to the public before the Council's November 1998 meeting as stock assessment documents and reports, which will be compiled into the Council's SAFE document (see **ADDRESSES**). Additional information is found in the EA prepared by the Council for this action, the SAFE document for the 1999 specifications, and documents available at the November 1998 Council meeting. All ABCs are expressed as total catch (landings plus discards) and apply only to U.S. waters unless otherwise specified, even if the assessments included Canadian waters.

Default OY Policy

The Council also has adopted a new, precautionary policy for establishing OY, which is intended to comply with the new Magnuson-Stevens Act requirements (Figure 1).

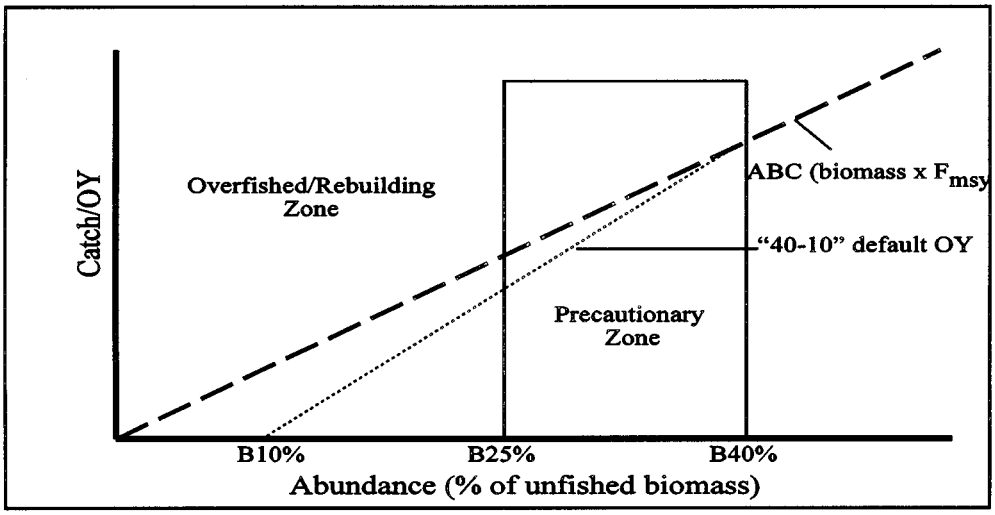

Figure 1. Illustration of default OY rule compared to ABC.

Regarding this policy, if the stock biomass is larger than the MSY biomass (Bmsy, i.e. B40% in Figure 1, where F40 is the proxy for Fmsy), the OY may be set equal to or less than ABC.

If the stock biomass is believed to be equal to or smaller than Bmsy, a precautionary OY threshold is established at the MSY biomass size. A stock whose current biomass is between 25 percent of the unfished level and the precautionary threshold is said to be in the ''precautionary zone.'' The Council's default OY harvest policy (represented by the line labeled ''40–10 default OY'' in Figure 1) reduces the exploitation rate when a stock is at or below its precautionary threshold. The farther the stock is below the precautionary threshold, the greater the reduction in OY will be relative to the ABC, until, at B10 percent, the OY would be set at zero. This is, in effect, a default rebuilding policy that will foster quicker return to the Bmsy level than would fishing at the ABC level.

If a stock falls below 25 percent of its unfished biomass (B25 percent), it is considered overfished, and the Council is required to develop a formal

rebuilding plan within the following year. However, the Council may set the OY higher than the default OY harvest policy requires if justified, and as long as the OY does not exceed the ABC (Fmsy) harvest rate and is consistent with the requirements of the Magnuson-Stevens Act and the NOAA National Standard Guidelines.

Additional precaution may be added on a case-by-case basis at any level of current biomass, and may be warranted by uncertainty in the data or by higher risks of being overfished.

Other OY considerations

In past years, some HGs (now called OYs) were expressed in terms of landed catch (Dover sole, sablefish, thornyheads, widow rockfish), and some were expressed in terms of total catch (*Sebastes* complex, whiting, lingcod). Although there were good reasons for these differences, it became difficult to keep them straight. In 1999, all OYs and allocations will represent total catch, and where possible, the expected landed catch equivalent will be presented. This approach will provide greater management flexibility if new information becomes available inseason because managers will then be able to make inseason modifications to discard estimates, and to the amount that may be landed. In this document, harvest amounts before 1999 are expressed as harvest guidelines or HGs, and harvest amounts for 1999 are expressed as optimum yields or OYs.

Those species or species groups managed with HGs in 1998 will continue to be managed with OYs (which are HGs) in 1999. In addition, new OYs are established for chilipepper and splitnose rockfish, which are removed from the *Sebastes* complex in the Eureka, Monterey, and Conception areas. The *Sebastes* complex consists of all rockfish managed by the FMP except chilipepper in the Eureka, Monterey, and Conception area (which is removed from the complex in 1999), Pacific ocean perch (POP) in the Vancouver and Columbia areas, widow rockfish coastwide, shortbelly rockfish coastwide, splitnose rockfish in the Eureka, Monterey, and Conception areas (which is removed from the complex in 1999), and thornyheads north of Pt. Conception (34°27′ N. lat.). However, in areas where the above listed individual species are not prevalent, they are included in the ABC for the ''remaining rockfish'' or ''other rockfish'' component of the *Sebastes* complex.

1999 ABCs and OYs

The derivation of the ABCs and OYs for the individual groundfish species are explained below and in Table 1. to this document. Derivations of commercial OYs, limited entry and open access allocations, and landed catch equivalents appear in the footnotes to Table 1 to this document. Recreational catch estimates provided by the Recreational Fishery Information Network (RecFIN) have been deducted, along with estimates of harvest by treaty tribes, when calculating the commercial OYs.

Lingcod

Lingcod is considered overfished under the new definitions because the lingcod stock was estimated to be at about 9 percent of its unfished biomass level. The most recent assessment (1997) addressed the entire Vancouver area (including Canada), and the Columbia area. The ABC for the U.S. portion of the Vancouver-Columbia area is 450 mt, the same as in 1998, based on the F35 harvest rate and the U.S.-Canada biomass distribution determined by the NMFS surveys (44 percent in U.S. waters). Because no new assessment was available for more southern waters, the same 60-percent reduction from the 1997 ABC that was applied to the U.S. Vancouver-Columbia area was applied to the Eureka, Monterey, and Conception areas, resulting in ABCs of 139 mt, 325 mt, and 46 mt, respectively. As a result, the coastwide ABC for lingcod in U.S. waters is 960 mt. If Canadian waters had been included, the ABC would have been 1,532 mt.

According to the default policy in Amendment 11, the OY for lingcod would be set at zero. However, considerable discussion confirmed that a zero OY would not eliminate fishing mortality because lingcod are unavoidably caught incidentally to other directed fisheries. Further reductions in fishing mortality of lingcod could only be achieved by substantial reductions, if not elimination, of other fisheries that inadvertently take lingcod, including recreational fisheries. The 1999 OY is set at 730 mt (down from 838 mt for total catch in 1998) to accommodate unavoidable bycatch and to avoid massive disruption of commercial and recreational fisheries in the interim while a rebuilding plan is being developed. Even at an OY of 730 mt, some stock rebuilding is expected to occur.

Whiting

A new stock assessment for whiting is expected in early 1999, so the Council has delayed its recommendation of a whiting ABC and OY until March 1999. The preliminary ABC and OY is discussed elsewhere in this **Federal Register**.

Sablefish

The sablefish biomass north of 36° N. lat. is believed to be at 37 percent of its unfished biomass, based on a combination of two new stock assessments. The 1999 ABC for sablefish, based on F35, is 9,692 mt north of 36° N. lat. (the Monterey-Conception area border), compared to 5,200 mt in 1998. Although the Fmsy proxy for sablefish remains at F35, the range of uncertainty in the assessments prompted the Council to recommend using the more conservative F40 harvest rate, in addition to the precaution provided by the ''40–10'' policy, in establishing the OY for 1999. Even with these precautionary measures, the 7,919 mt OY in 1999 is substantially higher than in 1998 (a 4,680 mt landed catch HG, equivalent to a total catch of 5,200 mt).

The ABC and OY for sablefish in the Conception area (south of 36° N. lat.) are based on estimated landings in that area of 472 mt, with landed catch equivalents of 425 mt. The only difference between 1998 and 1999 is the conversion from a landed catch HG in 1998 to a total catch OY in 1999. There are no limited entry and open access allocations for Conception area sablefish at this time.

Jack mackerel

Only jack mackerel north of 39°00′ N. latitude are managed by the FMP. The ABC and OY of 52,600 mt include waters beyond 200 nm. This species will be included in the Coastal Pelagics Fishery Management Plan, which is expected to be approved in 1999, at which time it will be removed from the Pacific Groundfish FMP.

Dover sole

The Dover sole biomass is believed to be larger than the level needed to produce MSY. The 1997 assessment evaluated the resource north of 36° N. lat. as a unit, and provided an ABC for landed catch using the F35 harvest rate, which was converted to total catch based on an estimate that 5 percent of the total catch is discarded. The Conception area ABC is at the level established in the original FMP. The 1999 coastwide ABC and OY for Dover sole are equal, at 9,426 mt, with a landed catch equivalent of 8,955 mt. The only change from 1998 is the conversion from a landed catch HG in 1998 to a total catch OY in 1999.

Chilipepper

A new stock assessment conducted in 1998 that indicated that chilipepper is a healthy stock, and that the biomass is believed to be larger than the level needed to produce MSY. ABCs have been set conservatively in the past in order to slow fishing down to MSY and to control levels of bycatch of bocaccio, an overfished species. Fishers now claim that 1998 bocaccio limits were so small that they were no longer targeting bocaccio. Recent trip frequency analyses have confirmed that few vessels are achieving bocaccio limits, indicating a lack of direct bocaccio targeting. In 1998, the ABC for chilipepper rockfish was 3,400 mt and there was no separate HG (now called OY); it was managed as one of the combined species in the *Sebastes* complex in the Eureka, Monterey, and Conception areas. In 1999, the ABC is set at 3,724 mt, the expected 3-year average yield of fishing at F40. Fishing at this rate with average recruitments would reduce the spawning output to 43 percent of its unfished levels in 3 years. For the first time in 1999, an OY and limited entry and open access allocations are specified for chilipepper. The OY, which equals ABC (and applies to the same area), is based on the new assessment and application of the F40 harvest rate.

Landings of chilipepper have averaged about 2,000 mt over the last 3 years, well below the ABC. For 1999, the Council recommended separating chilipepper from the *Sebastes* complex in the Eureka, Monterey, and Conception areas, to encourage fishers to fish more specifically for chilipepper. Moreover, because chilipepper stocks represent a relatively large percentage of southern *Sebastes* stocks, leaving them in the complex would inflate the overall trip limit for the complex, which could lead to inappropriately high harvest of other species in the complex that need protection.

The Council considered setting the OY at the 2,000 mt recent catch level because of concerns over the bycatch of bocaccio taken with chilipepper. Instead, the Council recommended that the OY be set equal to ABC. The catch ratio of bocaccio to chilipepper has declined in recent years and the Council heard testimony from fishers who felt they could fish for chilipepper selectively and would increase their harvest of that species if not constrained by the *Sebastes* trip limit. The inability to harvest the chilipepper ABC in recent years may be due to market limitations, or may be an artifact of management measures imposed on other components of the *Sebastes* complex, particularly bocaccio. Leaving the chilipepper OY at about the same level as in 1998, but separating it from the *Sebastes* complex, will provide information on whether the relatively low landings of chilipepper were in some part due to low limits on bocaccio. However, it should be noted that development of a rebuilding plan for bocaccio next year may result in further restrictions on chilipepper.

POP

A new stock assessment conducted in 1998 confirmed that POP is at 13 percent of its unfished biomass and, thus, is considered overfished. POP was depleted off Washington, Oregon, and California by foreign fishing during the 1960s and early 1970s. In 1981, a rebuilding program was established for POP in the Vancouver and Columbia areas. (POP are not common in the more southern areas.) POP are part of multi-species groundfish catches and cannot be completely avoided when harvesting other groundfish species. POP are taken as bycatch in fisheries for other rockfish, arrowtooth flounder, and Dover sole. For many years, the ABC for POP has been set at ''zero,'' but a low level of landings (650 mt in 1998) has been allowed to avoid the waste of fish that would otherwise be discarded. The annual HGs were intended only to accommodate the catch of fish that would be discarded, and were not intended to encourage targeting. Even if retention of POP were prohibited, it would not substantially reduce fishing mortality because POP are caught in small amounts in other fisheries, particularly in fisheries for other rockfish species. Because strong year classes, which are necessary to rebuild the stock, occur infrequently, the lack of rebuilding to date is not unexpected.

Based on the F40 exploitation rate and the new assessment, the 1999 ABC for POP is 695 mt (whereas it was set at zero in recent years). Under the default OY policy and using the F40 exploitation rate, the OY for POP would be 214 mt, much lower than the 1998 OY of 650 mt that was intended to be an estimate of true incidental landings. If current landings are all truly incidental, then imposing lower trip limits will create bycatch and discards from a portion of current landings. Under this assumption, POP mortality likely cannot be reduced without some form of effort control on other fishing strategies, such as reductions in limits for other species or time/area closures. To the extent that some current POP catches result from targeting, there is a potential to reduce current fishing mortality by lowering current limits, although this would likely increase discards by some fishers. Consequently, instead of using the default OY policy, the Council adopted a 1999 OY of 500 mt, which is close to the level of landings in 1998. If a 16-percent discard rate is assumed, the total catch equivalent would be 595 mt. A new rebuilding plan will be developed for POP under the provisions of the Magnuson-Stevens Act. The POP stock assessment indicates that accommodating catches at this level in 1999 while a rebuilding plan is being developed does not appear to lead to further stock decline.

Splitnose rockfish

Like chilipepper, splitnose rockfish also have been removed from the *Sebastes* complex in the Eureka, Monterey, and Conception areas. This species was particularly available to fishing gear in 1998, and it was dominating much of the *Sebastes* landings. The 1999 ABC of 868 mt is the same as in 1998, when splitnose rockfish was managed under *Sebastes* complex limits. The new OY, which is established for the first time in 1999, is equal to the ABC.

Widow rockfish

As in 1998, the 5,750-mt total catch ABC for widow rockfish is based on the F40 harvest rate, which is the current MSY proxy for rockfish species. The stock is believed to be at 29 percent of its unfished biomass, so the default harvest policy is used to derive the OY. The 1999 OY of 5,023 mt is very close to the 1998 harvest guideline (5,090 mt).

Shortspine thornyheads

Shortspine thornyheads are a valuable and small component of the fishery that also includes Dover sole, longspine thornyheads, and trawl-caught sablefish (the DTS complex). The 1998 1,000 mt shortspine thornyhead ABC applied from the U.S./Canada border south to Pt. Conception and included 175 mt for the area between Pt. Conception and 36° N. lat.; therefore, the portion of the 1998 ABC that would have applied north of the Conception area is 825 mt. The 1999 ABC for shortspine thornyheads of 1,261 mt is based on a new assessment, and applies north of the Conception area. Because shortspine thornyheads are at 32 percent of their unfished biomass, the default ''40–10'' OY policy was used to determine the 1999 OY of 1,150 mt. However, both the ABC and OY are based on the F35 harvest rate, which is more liberal than the F40 harvest rate for most other rockfish. Although other rockfish have been managed under an F40 harvest rate, the

Groundfish Management Team (GMT) has accepted use of F35 in setting the shortspine thornyhead ABC. Use of the F40 harvest rate policy, rather than F35 in 1999, would have lowered the OY by about 200 mt, but would not have changed the ratio of the current biomass relative to the unfished biomass level. Even under the F_{35} harvest rate policy, the 1999 OY is more conservative than in 1998. The 1999 total catch OY of 1,150 mt has a landed catch equivalent of 805 mt north of 36° N. lat., which is lower than the 1,082 mt landed catch HG for the same area in 1998.

The Council discussed applying additional precaution in light of the considerable uncertainty in the assessment results for shortspine thornyheads. There are concerns with the data, as it is very limited and is a major factor in the uncertainties arising from the assessment. Although the Council's GMT indicated that there is a 57-percent chance that the stock is not overfished, it also indicated a corresponding 43 percent chance that the stock is already overfished. However, assuming that the stock is at 32 percent of the unfished biomass, the assessment also indicates that setting the OY at 1,150 mt is not likely to significantly worsen the stock condition over the next 3 years, and in fact may not change the biomass level to any great extent. In 1999, a separate ABC and OY apply to the small portion of the Conception area that is north of Pt. Conception (34°27′—36°00′ N. lat.). The ABC and OY for this small area remain at 175 mt, with landed catch equivalents of 123 mt. The southern Conception area has neither an ABC nor OY.

Longspine thornyheads

The longspine thornyhead biomass is believed to be larger than the level needed to produce MSY. Management measures are set more conservatively for longspine thornyheads to protect shortspine thornyheads, which often are taken in the same catch. As in 1998, the ABC for longspine thornyheads is 4,102 mt, which applies to the Vancouver, Columbia, Eureka, and Monterey areas. The OY is set equal to ABC; the increase from 1998 to 1999 represents only the conversion from a landed catch HG to a total catch OY. For the Conception area north of Pt. Conception, the ABC and OY are set at 429 mt, based on the average 1995–1996 landings. The southern Conception area has neither an ABC nor an OY.

Sebastes complex

For derivation of the ABCs and OYs, which are based on the ABCs and OYs of the component species, see footnote o/ of Table 1 to this document.

Bocaccio

Bocaccio is at only 7 percent of its unfished biomass and, therefore, is overfished under the new FMP definition. The ABC of 230 mt, the same as in 1998, is based on F40 and applies to the Eureka, Monterey, and Conception area. Under the default harvest policy, the OY would be set at zero. However, prohibiting landings of bocaccio would not eliminate fishing mortality and would increase discards because it is unavoidably caught, in very small amounts, in other fisheries. There appears to be no immediate or plausible solution as to how to reduce fishing mortality of bocaccio significantly in 1999 without severely constraining landings of other, more valuable species in the *Sebastes* complex. Consequently, the Council recommended an OY of 230 mt, the same as in 1998, in part because fishing mortality would not be reduced by a complete prohibition on retention, and in part due to unavoidable harvest in the recreational fishery. The recreational sector is expected to take 80 mt of bocaccio in 1999, and the commercial sector is expected to harvest 150 mt. Nonetheless, the Council will be developing a rebuilding program in the next year for bocaccio, for implementation in 2000, which very well may include reducing target fisheries on associated species. Bocaccio in the Vancouver and Columbia areas is included in ''remaining rockfish,'' and the 1999 ABC for this area is 424 mt, the same as in 1998.

Canary Rockfish

The ABC for canary rockfish in the Vancouver-Columbia area remains at 1,045 mt and is based on the F40 level. Canary rockfish is believed to be at 26 percent of its unfished biomass. Therefore, the default harvest policy for stocks in the precautionary zone was used to derive an OY of 857 mt.

Yellowtail Rockfish

Yellowtail rockfish is believed to be at 39 percent of its unfished biomass. The yellowtail rockfish assessment in 1997 provided an ABC of 4,657 mt for the Vancouver-Columbia-Eureka areas, including Canada. The U.S. portion is estimated to be 3,539 mt, 76 percent of the U.S.-Canada ABC, based on the survey biomass estimate for the portion of the assessment area in U.S. waters. The 3,465-mt ABC for the Vancouver/Columbia area in Table 1. to this document was derived by subtracting 74 mt for the Eureka area. The 3,435 mt OY is based on the F40 yield and the default harvest policy.

Blackgill Rockfish

An ABC of 365 mt, based on F40, is added for the first time for blackgill rockfish, which applies to the Conception area. Blackgill rockfish, which are included in the ''remaining rockfish'' category of the *Sebastes* complex, are believed to be at 51 percent of their unfished level. This stock previously was included in ''other rockfish'' and did not have an individual ABC. The ABC for ''other rockfish'' has been reduced, and the ABC for ''remaining rockfish'' has been increased, by 365 mt.

Summary: Overfishing, Overfished, and Approaching an Overfished Condition.

The status of the resource is evaluated with regard to the Magnuson-Stevens Act standards, using the standards and criteria in Amendment 11 to the FMP.

Overfishing

None of the 1999 ABCs are knowingly set higher than Fmsy or its proxy, none of the OYs are set higher than the corresponding ABCs, and the management measures announced herein are designed to keep harvest levels within the specified OYs. Therefore, overfishing, which means fishing above ABC, is not expected to occur on any groundfish species for which there is information in 1999.

Overfished

Three species are believed to be overfished, which means that their current biomass is less than 25 percent of the unfished biomass level: lingcod, POP, and bocaccio. Rebuilding plans will be developed for the species, as required by the Magnuson-Stevens Act.

Approaching a Condition of Being 0verfished

This condition applies to those species that currently are not overfished, but are expected to be overfished in 2 years. The most recent information indicates that canary rockfish is at 26 percent of its unfished biomass, and therefore very close to the overfishing threshold. Until a new stock assessment is prepared in 1999, canary rockfish will considered approaching a condition of being overfished.

Bycatch and Discards

Stock assessments and inseason catch monitoring are designed to account for all fishing mortality, including that resulting from fish discarded at sea. Discards of rockfish and sablefish in the fishery for whiting are well monitored

and are accounted for inseason as they occur. In the other fisheries, discards caused by trip limits have not been monitored consistently, so discard estimates have been developed to account for this extra catch. A discard level of 16 percent of the total catch, previously measured for widow rockfish in a scientific study, is assumed to be appropriate for the commercial fisheries for widow rockfish, yellowtail rockfish, canary rockfish, and POP. A discard estimate of 9 percent is used for longspine thornyheads, 30 percent for shortspine thornyheads, 5 percent for Dover sole, and 10 percent for sablefish.

Foreign and Joint Venture Fisheries

For those species that will not be fully utilized by domestic processors or harvesters, and that can be caught without severely affecting species that are fully utilized by domestic processors or harvesters, foreign or joint venture operations may occur. A joint venture occurs when U.S. vessels deliver their catch to foreign processing vessels in the EEZ. A portion of the OYs for these species may be apportioned to domestic annual harvest (DAH), which in turn may be apportioned between domestic annual processing (DAP) and joint venture processing (JVP). The portion of an OY not apportioned to DAH may be set aside as the total allowable level of foreign fishing (TALFF). In January 1999, no surplus groundfish are available for joint venture or foreign fishing operations. Consequently, all the OYs in 1999 are designed entirely for DAH and DAP (which are the same in this case); JVP and TALFF are set at zero.

II. Limited Entry and Open Access Fisheries

The FMP established a limited entry program that, on January 1, 1994, divided the commercial groundfish fishery into 2 components: The limited entry fishery and the open access fishery, each of which has its own allocations and management measures. The limited entry and open access allocations are calculated according to a formula specified in the FMP, which takes into account the relative amounts of a species taken by each component of the fishery during the 1984–88 limited entry window period.

The groundfish species that had limited entry and open access allocations in 1998 continue to be allocated between the 2 sectors in 1999, with one addition. At its November 1998 meeting, the Council recommended that open access and limited entry allocations be established for chilipepper rockfish for the first time. Also, because the OYs are all expressed in terms of total catch, virtually all of the limited entry and open access allocations are expressed in terms of total catch (except for sablefish, which is explained here), and estimates of discards will be applied separately to the limited entry and open access allocations, as data become available. This means that, in 1999, estimates of trip-limit induced discards that previously were taken ''off the top'' before setting the limited entry and open access allocations (and so proportionally reduced both allocations), will instead be deducted only from the limited entry allocations for purposes of estimating the landed catch equivalents. Estimated bycatch of yellowtail rockfish and widow rockfish in the offshore whiting fishery are also deducted from the limited entry allocations to determine the landed catch equivalents for the target rockfish fishery. The landed catch equivalents are the harvest objectives used when adjusting trip limits and other management measures during the season. Although this revised process complicates the calculation of the landed catch equivalents for the limited entry allocations, it more appropriately applies the discard estimates to the fleet that is responsible for them. The one exception is the limited entry sablefish fishery, which continues to be allocated as in recent years. The 10-percent discard estimate for this fishery continues to be deducted from the OY before the limited entry and open access allocations are calculated, as both fisheries likely experience discards, and because the initial allocation was based on this process. Consequently, the open access and limited entry sablefish allocations are expressed in terms of landed catch. Discards in most open access fisheries are believed to be small and no discard estimates are applied to the open access fishery at this time, but may be applied during the season if information becomes available. As a result, the OYs and landed catch equivalents for the open access fisheries are the same in 1999, with the exception of sablefish.

Following these procedures, the Regional Administrator calculated the amounts of the allocations that are presented in Table 1 to this document. Unless otherwise specified, the limited entry and open access allocations are treated as OYs in 1999. There may be slight discrepancies from the Council's recommendations due to rounding.

Open Access Allocations

The open access fishery is composed of vessels that operate under the OYs, quotas, and other management measures governing the open access fishery, using (1) exempt gear, or (2) longline or pot (trap) gear fished from vessels that do not have limited entry permits endorsed for use of that gear. Exempt gear means all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp or spot or ridgeback prawns (shrimp trawls), and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers.)

The open access allocation is derived by applying the open access allocation percentage to the OY, or if there is a set-aside for recreational, tribal, or compensation for resource survey fishing, this is first deducted and then the percentage is applied to the commercial OY. (The commercial OY is the annual OY after subtracting any set-asides for recreational or tribal fishing or compensation for conducting resource surveys.) For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected. Landed catch equivalents may be presented that estimate expected discards, and that represent the amount of landings that the management measures are designed to achieve.

Limited Entry Allocations

The limited entry fishery means the fishery composed of vessels using limited entry gear fished pursuant to the OYs, quotas, and other management measures governing the limited entry fishery. Limited entry gear means longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Pt. Arena, CA.) Beginning in 1997, a sablefish endorsement also is required to operate in the limited entry non-trawl regular or mop-up seasons for sablefish.

The limited entry allocation (in total catch) is the OY reduced by: (1) Set-asides, if any, for treaty Indian fisheries, recreational fisheries, or compensation fishing for participation in resource surveys (which results in the commercial OY or quota); and (2) the open access allocation. Allocations for Washington coastal tribal fisheries are discussed in paragraph V and, for whiting, elsewhere in this **Federal Register** issue.

III. 1999 Management Measures

Projections of landings in 1998 are based on the information available to the Council at its November 1998 meeting (Supplemental GMT Report B.5., November 1998), unless otherwise noted.

Limited Entry Fishery

The management measures for vessels operating in the 1999 limited entry fishery are designed to keep landings within the OYs or limited entry allocations. Cumulative trip limits continue to be used for most of the limited entry fishery, which allow fishers to fish up to a specified limit during a period of time without a limit on the number of landings. Cumulative period limits have been used in recent years instead of single trip landing limits in order to minimize bycatch and discards. However, declining OYs have resulted in declining cumulative limits, which have been associated with increased bycatch and discard levels. For 1999, the Council recommended that NMFS eliminate the 2-month cumulative limit period system, where no more than 60 percent of a 2-month limit could be taken in either calendar month. Instead, the Council recommended an industry proposal that divides the fishing year into three different phases, with specified limits for different time periods for each species in each phase that are designed to keep landings within the OYs. Under this new system, cumulative period limits are set to minimize discards by distributing species cumulative limits in a way that encourages fishers to direct fishing effort on particular species when those species are most concentrated. For example, the cumulative trip limits for Dover sole are highest in the winter months, when Dover sole aggregates in large numbers and is less likely to be caught in association with other species.

For most species caught in the limited entry fishery, there will be no monthly limit within the cumulative landings limit periods within each phase. Phase 1 is a single cumulative limit period that is 3 months long, from January 1–March 31. A 3-month period early in the year is sensible because effort tends to be lower at that time, fishing trends are difficult to discern, and there would be little, if any need to adjust trip limits during that period. Also, safety would be enhanced by providing greater flexibility to fishers in deciding when to fish during winter months. Phase 2 consists of 3 separate 2-month cumulative limit periods of April 1–May 31, June 1–July 31, and August 1–September 30. Two-month cumulative trip limit periods from April through September are similar to the periods used in recent years. Phase 3 consists of 3 separate one-month cumulative limit periods of October 1–31, November 1–30, and December 1–31. One-month periods, as used in recent years, provide maximum flexibility for adjusting trip limits at the end of the year to ensure that OYs and allocations are not exceeded. Within all cumulative limit periods, there will be monthly cumulative limits for POP and for bocaccio in order to discourage targeting on those species.

Harvest rates and landings will be monitored throughout the year and cumulative limits may be raised or lowered to ensure that the fishery has access to the OYs for managed species without exceeding those OYs. However, the Council noted that if catches in the earlier cumulative limits periods are below expected levels, cumulative trip limits for mid-year periods may not be adjusted upward to give fishers access to earlier period underages. The 1-month cumulative limit periods at the end of the year give the Council more flexibility to meet OYs than the larger mid-year periods.

Mid-water trawl whiting fisheries and limited entry, nontrawl sablefish fisheries are managed separately from the majority of the groundfish species and will not be included in the three-phase cumulative trip limit system. Whiting season start dates and the 2-month cumulative limit periods for the nontrawl sablefish daily trip limit fisheries will remain unchanged from 1998.

For the purposes of the restriction that limited entry permit transfers are to take effect only on the first day of a major cumulative limit period (50 CFR § 660.333(c)(1)), those days in 1999 would be January 1, April 1, June 1, August 1, October 1, November 1, and December 1.

Platooning

An optional platooning system was initiated in 1997 that enables the limited entry trawl fleet to provide a more consistent supply of fish to processors. Whereas the cumulative limit periods normally begin on the first of a month (this is the ''A'' platoon), a vessel in the ''B'' platoon operates under limit periods lagged by 2 weeks, from the 16th of a month to the 15th of a month. All limited entry trawl vessels are automatically in the ''A'' platoon, unless the permit owner indicated in the annual permit renewal that the permitted vessel will participate in the ''B'' platoon. Vessels operating in the ''B'' platoon will not be able to land any species of groundfish from January 1–15, 1999. The effective dates of changes to the cumulative trip limits for the ''B'' platoon will occur on the 16th of the month unless otherwise specified. Special provisions will be made to accommodate ''B'' platoon vessels at the end of the year so that the same amount of fish is made available to both ''A'' and ''B'' platoon vessels. For example, a vessel in the ''B'' platoon could have the same cumulative trip limit for the final period as vessels in the ''A'' platoon, but the final period may be 2 weeks shorter, so that both the ''A'' and ''B'' fishing periods end on December 31, 1999. Alternatively, the ''B'' platoon may have 6 weeks to take the cumulative limits from the final 2 cumulative limit periods. The choice of platoon applies to the permit for the entire calendar year, even if the permit is sold, leased, or otherwise transferred. The platoon system is experimental and may not be continued in the future if the Council decides that the benefit does not outweigh technical and administrative burdens.

Open Access Fishery

The trip limits for the open access fishery are designed to keep landings within the open access allocations, while allowing the fisheries to land groundfish for as long as possible during the year. In 1998 and previous years, most open access limits were linked to (and could not exceed) limited entry limits, so that the open access monthly cumulative limits for most species were 50 percent of the limited entry 2-month cumulative limits for those species. For 1999, the limited entry 2-month cumulative limit system has been eliminated, and open access cumulative limits have been unlinked from limited entry cumulative limits. Open access monthly cumulative limits are described here, by species. Monthly cumulative limits may change during the year based on monitoring of the fishery's progress towards the different open access allocations for managed species. Open access lingcod landings will be allowed only from April 1–November 30, 1998, to allow a higher monthly limit during the 8-month season than would have been possible under a 12-month season.

The nontrawl sablefish fishery north of 36° N. lat. remains a daily trip limit fishery of 300 lb (136 kg) within a 2-month cumulative limit of 1,800 lb (816 kg). South of 36° N. lat., the nontrawl sablefish daily trip limit of 350 lb (159 kg) with no monthly limit also remains in effect.

The thornyhead fishery remains closed to all open access gear north of

36° N. lat., and is under a 50-lb (23 kg) daily trip limit south of 36° N. lat.

In a change from previous years, there will be a 300-lb (136 kg) groundfish trip limit for all exempted trawl gear, which includes the same daily trip limits for sablefish (300 lb (136 kg) coastwide) and thornyheads as all other open access gears. The open access limits for other groundfish species or complexes may not be exceeded, and will count toward the 300 lb (136 kg) groundfish cumulative trip limit. Unlike in past years, pink shrimp trawlers will not be permitted to multiply the daily trip limit for groundfish by the number of days in the fishing trip. This change was made to address perceptions that providing multi-day limits to the shrimp fishery gave the shrimp fleet an unfair advantage and that much of their groundfish bycatch could be eliminated by use of fish excluders.

Reducing Bycatch. The Magnuson-Stevens Act defines bycatch as ''fish which are harvested in a fishery, which are not sold or kept for personal use, and include economic discards and regulatory discards.'' In the Pacific Coast groundfish fishery, and in many other fisheries, the term bycatch is commonly used to describe nontargeted species that are landed and sold or used, and the term ''discard'' used to describe those that are not landed or used. Bycatch information in the groundfish fishery is scarce. However, the groundfish management measures include provisions to reduce trip limit induced bycatch and to account for that bycatch in its calculations and tracking of ABCs.

Based on limited studies in the mid-1980s and information on species compositions in landings, the Council has developed assumed discard rates for sablefish, longspine and shortspine thornyheads, widow rockfish, canary rockfish, yellowtail rockfish, Dover sole, and lingcod. These discard rates are used to calculate an amount of assumed discard that is subtracted from the annual total catch OY to yield a landed catch equivalent. Although there is no exact measure of bycatch amounts in most fisheries, the assumed amounts are taken into account in this way to prevent total landings from exceeding the ABC. Certain species are also managed within mixed-stock complexes, like the ''DTS complex'' of Dover sole, thornyheads, and sablefish. For groundfish complex management, trip limits are set to match the known species catch proportions, which may mean reducing trip limits on some of the more abundant species to prevent bycatch of less abundant species, or setting trip limits at levels that vary throughout the year according to when particular stocks are most aggregated. The new limited entry, 3-phase cumulative limit system is designed to encourage fishers to direct effort on particular species when those species are aggregated, or when bycatch species are less available. Longer cumulative limit periods, coupled with trip limits that recognize species distribution throughout the fishing year, will also reduce the opportunities for discarding groundfish in excess of trip limits.

Fishing Communities

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with ten national standards, one of which requires that conservation and management measures ''take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.'' Commercial and recreational fisheries for Pacific coast groundfish contribute to the economies and shape the cultures of numerous fishing communities in Washington, Oregon, and California. In setting this year's specifications and management measures, the Council took several steps to accommodate the needs of those communities within the constraints of requirements to protect overfished stocks and to prevent overfishing. In general, the Council allows the largest harvest possible, consistent with conservation needs of the fish stocks.

For two of the three overfished species (lingcod and bocaccio), the Council could have prohibited all landings of these species, despite knowing that lingcod and bocaccio are caught in mixed-stock fisheries and that interception and incidental mortality are inevitable whether a retention prohibition is in place or not. Instead, the Council looked for some minimum level of retention in both commercial and recreational fisheries that would allow fishery participants to land some of their incidental catch of lingcod and bocaccio. As it has done with POP for years, the Council's goal was to set retention at some minimal level that would discourage targeting, while allowing fishers to land already-dead, incidentally caught fish. The retention levels allowed for each of these species are below the overfishing level, but do recognize that some unintentional bycatch will occur. In addition to these measures that cushion the socio-economic impacts of necessary stock protection restrictions, the Council continued the year-round fishery opportunity that is important to the fishermen, and particularly to the processing sector, in order to maintain a continuity of employment opportunity in fishing communities. They modified the trip limit system that has been used in recent years to extend the fishing season throughout the year by adopting a three phase cumulative trip limit system that was developed by a group of industry participants in consultation with the GMT. The three phase system and its benefits are explained above.

Background and Council Recommendations

The following discussions apply to the limited entry fishery unless otherwise stated.

Widow Rockfish

Limited entry. In 1998, the limited entry 2-month cumulative limit of 25,000 lb (11,340 kg) was in effect until May 1, at which time it was increased to 30,000 lb (13,608 kg). On September 1, when limited entry trip limits were converted to 1-month cumulative limits, the widow rockfish limit of 30,000 lb (13,608 kg) was converted to 15,000 lb (6,804 kg) and was in effect until October 1, at which time it was increased to 19,000 lb (8,618 kg), where it remained to the end of the year. Landings were projected to be 3,746 mt in 1998, 5.4 percent below the HG (4,276 mt for landed catch). For 1999, the total catch of widow rockfish is reduced slightly, from 5,090 mt (total catch equivalent of 4,276 mt 1998 HG) in 1998 to 5,023 mt (total catch OY) in 1999. Unless modified inseason, the 1999 widow rockfish cumulative trip limits in the new 3-phase management system will be: 70,000 lb (31,752 kg) in January–March; 16,000 lb (7,257 kg) in each 2-month period of April–May, June–July, and August–September, and; 30,000 lb (13,608 kg) in each month for October, November, and December.

Open access. The open access allocation for widow rockfish is 3.7 percent of the commercial OY. In 1998, open access landings of widow rockfish were initially managed with a monthly limit that was 50 percent of the limited entry 2-month cumulative limit, or 12,500 lb (5,670 kg) until May 1, when it was raised to 15,000 lb (6,804 kg). On July 1, the open access widow rockfish limit was separated from the limited entry widow rockfish limit and reduced to 3,000 lb (1,361 kg). From October 1 through the end of the year, all widow rockfish landings were prohibited, due to early attainment of the open access allocation. In 1999, widow rockfish landings in the open access fishery will

be constrained by a 2,000 lb (907 kg) monthly cumulative limit.

The Sebastes Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio, but Excluding Chilipepper and Splitnose Rockfish)

Limited entry. Beginning January 1, 1998 (63 FR 419, January 6, 1998), the limited entry fishery for the *Sebastes* complex was managed under a 2-month cumulative trip limit of 40,000 lb (18,144 kg) north of Cape Mendocino (40°30′ N. lat.) and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these 2-month cumulative limits for the *Sebastes* complex, no more than 11,000 lb (4,990 kg) could be yellowtail rockfish north of Cape Mendocino, no more than 2,000 lb (907 kg) could be bocaccio south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) could be canary rockfish coastwide. On May 1, 1998 (63 FR 24970, May 6, 1998), the 2-month cumulative trip limit for yellowtail rockfish was increased to 13,000 lb (5,897 kg) because landings had been slowed by unusually severe weather during the first quarter of 1998. On July 1, 1998 (63 FR 36612, July 7, 1998), the 2-month cumulative trip limit for *Sebastes* south of Cape Mendocino was lowered to match the 40,000 lb (18,144 kg) limit north of Cape Mendocino because *Sebastes* landings in the southern area had been proceeding at a faster rate than had been anticipated. In 1998, fishers targeting *Sebastes* complex species south of Cape Mendocino encountered unusually large concentrations of splitnose rockfish (also known as ''rosefish''), and the resultant large splitnose rockfish landings drove the *Sebastes* harvest rate south of Cape Mendocino sharply upward. On September 1, 1998 (63 FR 45966, August 28, 1998), the 2-month trip limits were converted to 1-month trip limits and were set at 20,000 lb (9,072 kg) cumulative per month for the *Sebastes* complex, of which, no more than 6,500 lb (2,948 kg) could be yellowtail rockfish north of Cape Mendocino, no more than 1,000 lb (454 kg) could be bocaccio south of Cape Mendocino, and no more than 7,500 (3,402 kg) could be canary rockfish coastwide.

Despite the July 1 reduction to the *Sebastes* trip limit south of Cape Mendocino, rockfish landings in the southern area continued at an unusually fast rate, and the limits for that area were reduced again in October. On October 1, 1998 (63 FR 53313, October 5, 1998), the monthly cumulative trip limit for *Sebastes* complex species south of Cape Mendocino was reduced to 15,000 lb (6,804 kg). Coastwide landings of canary rockfish had also been proceeding at an accelerated rate, and at its September meeting, the Council announced that it expected that the 953 mt limited entry allocation for canary rockfish would be reached by October 1, 1998. The Council further expected that, even if all landings of canary rockfish were prohibited from October 1 through the end of the year, fishers would still have to discard at least 500 lb (227 kg) per month of incidentally caught canary rockfish. Because incidentally caught canary rockfish are dead when brought to the surface, requiring fishers to discard these fish would not reduce fishing mortality. For this reason, the Council decided to exceed the 1998 limited entry allocation for canary rockfish by allowing a small monthly trip limit of 500 lb (227 kg) within the overall *Sebastes* complex limit, effective October 1, 1998, so that fishers would not have to discard all of their incidentally caught canary rockfish. The Council expected that this amount would be small enough to discourage targeting on canary rockfish. Projected 1998 landings of *Sebastes* complex species north of Cape Mendocino, yellowtail rockfish north of Cape Mendocino, and canary rockfish coastwide are all expected to be within 5 percent of the limited entry allocations for those species or species groups. Landings of *Sebastes* complex species south of Cape Mendocino were projected to be 5,272 mt (12.7 percent above the limited entry allocation), while bocaccio harvest was projected to be about half that species' limited entry allocation.

The *Sebastes* complex OY for south of Cape Mendocino has been significantly reduced because two of the more populous species in the complex, chilipepper rockfish and splitnose rockfish, have been separated from the *Sebastes* OY south of Cape Mendocino. In 1998, the ABC for chilipepper rockfish was 3,400 mt and there was no separate HG; it was managed as one of the combined species in the *Sebastes* complex in the Eureka, Monterey, and Conception areas. The splitnose rockfish OY of 868 mt in 1999 is the same as its 1998 ABC, when it was part of the 1998 overall *Sebastes* complex HG for south of Cape Mendocino. Trip limits for 1999 landings of chilipepper and splitnose rockfish in 1999 are explained here. Unless modified inseason, the 1999 *Sebastes* complex species cumulative trip limits in the new three-phase management system will be 24,000 lb (10,886 kg) north of Cape Mendocino and 13,000 lb (5,897 kg) south of Cape Mendocino in January–March; 25,000 lb (11,340 kg) north of Cape Mendocino and 6,500 lb (2,948 kg) south of Cape Mendocino in each 2-month period of April–May, June–July, and August–September, and; 10,000 lb (4,536 kg) north of Cape Mendocino and 5,000 lb (2,268 kg) south of Cape Mendocino in each month for October, November, and December. Within the *Sebastes* complex limits, yellowtail rockfish landings north of Cape Mendocino may not exceed the following cumulative trip limits in the three-phase management system: 15,000 lb (6,804 kg) in January–March; 13,000 lb (5,897 kg) in each 2-month period of April–May, June–July, and August–September; and 5,000 lb (2,268 kg) in each month for October, November, and December. Within the *Sebastes* complex limits, canary rockfish landings coastwide may not exceed the following cumulative trip limits in the three-phase management system: 9,000 lb (4,802 kg) in January–March; 9,000 lb (4,802 kg) in each 2-month period of April–May, June–July, and August–September, and; 3,000 lb (1,601 kg) in each month for October, November, and December. Also within the *Sebastes* complex limits south of Cape Mendocino, no more than 750 lb (340 kg) per month may be bocaccio at any time of year.

Open Access

Landings in the open access fishery of yellowtail, canary rockfish, bocaccio, and the *Sebastes* complex as a whole were initially constrained in 1998 by cumulative limits that were 50 percent of the 2-month limited entry cumulative limits, and by accumulative limits on all rockfish. Most open access limits were linked to limited entry limits when the limited entry limit for yellowtail rockfish north of Cape Mendocino was increased on May 1 and, as a consequence, the open access limit for yellowtail increased from 5,500 lb (2,495 kg) to 6,500 lb (2,948 kg) (63 FR 24970, May 6, 1998). However, these limits were believed not to be low enough to keep open access harvest rates at levels that could be sustained throughout the year, particularly for northern rockfish fisheries and for canary rockfish coastwide. South of Cape Mendocino, *Sebastes* complex harvest attainment in the open access fishery proceeded at a much slower rate than limited entry harvest attainment. Open access limits for *Sebastes* complex species were first unlinked from limited entry limits on July 1, when the ''all rockfish'' cumulative trip limit was replaced with a 33,000 lb (14,969 kg) monthly limit for *Sebastes* complex species coastwide, and the monthly canary rockfish limit was reduced from

7,500 lb (3,402 kg) to 200 lb (91 kg) (63 FR 36612, July 7, 1998). Following these changes, the open access allocations were projected to be reached for the *Sebastes* complex and yellowtail rockfish in the Vancouver and Columbia management areas, and for canary rockfish coastwide. Continued fishing on other rockfish species would have resulted in additional bycatch of the *Sebastes* species. For these reasons, on October 1, all open access rockfish landings were prohibited north of Cape Blanco (the southern border of the Columbia management area), and all open access canary rockfish landings were prohibited coastwide (63 FR 53313, October 5, 1998).

In 1999, *Sebastes* complex limits for the open access fishery have been unlinked from the limited entry fishery so that open access groundfish landings might be better spread throughout the year. For *Sebastes* complex species north of Cape Mendocino, the Council recommended a cumulative monthly limit of 3,600 lb (1,633 kg), of which no more than 400 lb (181 kg) per month may be species other than yellowtail or canary rockfish. Also, within that *Sebastes* complex limit for north of Cape Mendocino, the monthly cumulative limit for yellowtail rockfish is 2,600 lb (1,179 kg), and the monthly cumulative limit for canary rockfish is 1,000 lb (454 kg). The 400-lb (181-kg) limit was intended to prevent fishers from filling the overall *Sebastes* limit of 3,600 lb (1,633 kg) with species that need additional protection. After the November Council meeting, an error was discovered in the Pacific Fisheries Information Network (PacFIN) data system that wrongly attributed certain rockfish landings to the open access fishery. As a result of this error, the Council made its recommendation for the 1999 trip limit based on data that overestimated landings projections for the open access fishery. In light of this new information, the 400 lb (181 kg) limit now appears too restrictive and poses an unnecessary burden on fishers who target on blue rockfish and black rockfish, particularly in southern Oregon and northern California. As effort in the open access fishery is low on most species early in the year, removing this restriction is not expected to encourage large landings or effort shifts. Consequently, NMFS has disapproved that portion of the open access trip limit for the *Sebastes* complex that would have limited landings to 400 lb (181 kg) per month of species other than yellowtail and canary rockfish. The recommendation for an overall *Sebastes* cumulative trip limit of 3,600 lb (1,633 kg) per month remains in effect, with the sublimits of 2,600 lb (1,179 kg) of yellowtail rockfish and 1,000 lb (454 kg) of canary rockfish. The Council will reconsider the open access *Sebastes* trip limits at its next groundfish meeting to determine if other changes are warranted.

For *Sebastes* complex species south of Cape Mendocino, the cumulative monthly limit will be 2,000 lb (907 kg), within which the monthly cumulative limit for bocaccio is 500 lb (227 kg) for all open access gear, except for a 1,000 lb (454 kg) monthly cumulative limit for setnet and trammel net gear, and the monthly cumulative limit for canary rockfish is 1,000 lb (454 kg). The canary rockfish monthly cumulative limit applies coastwide.

Chilipepper Rockfish The Council has recommended separating chilipepper rockfish from the *Sebastes* complex OY and trip limits so that fishers will have an incentive to target chilipepper while minimizing incidental take of other, less robust *Sebastes* complex species, particularly bocaccio. Chilipepper rockfish have a 3,724 mt OY in 1999. The open access allocation of chilipepper rockfish is 32.6 percent of the commercial OY of 3,651 mt, which leaves 2,461 mt available to the limited entry fishery. Unless modified inseason, the 1999 chilipepper rockfish cumulative limited entry trip limits in the new three-phase management system will be: 45,000 lb (20,412 kg) in January–March; 25,000 lb (11,340 kg) in each 2-month period of April–May, June–July, and August–September; and 18,000 lb (8,165 kg) in each month for October, November, and December. For open access fisheries, the chilipepper monthly cumulative trip limit will be 6,000 lb (2,722 mt), unless modified inseason.

Splitnose Rockfish In 1998, splitnose rockfish, also called ''rosefish,'' dominated many trawl rockfish tows south of Cape Mendocino. Fishers commented at the September and November Council meetings on the unusually high amounts of splitnose rockfish in their catches, and asked that the Council separate splitnose rockfish from the *Sebastes* complex so that future overall *Sebastes* limits would not be achieved too quickly because of large splitnose rockfish landings. For these reasons, the Council recommended a separate OY of 868 mt for splitnose rockfish in 1999. Unless modified inseason, the 1999 splitnose rockfish cumulative limited entry trip limits in the new 3-phase management system will be: 32,000 lb (14,515 kg) in January–March; 19,000 lb (8,618 kg) in each 2-month period of April–May, June–July, and August–September; and 10,000 lb (4,536 kg) in each month for October, November, and December. Splitnose rockfish have not commonly been caught in open access fisheries; however, the Council set a 100 lb (45 kg) monthly cumulative trip limit for open access landings of splitnose rockfish, to allow open access fishers to land splitnose rockfish they may catch incidentally.

POP

Limited entry. The limited entry 2-month cumulative trip limit for POP remained the same throughout 1998, at 8,000 lb (3,629 kg) per 2-month period; it has been at this level since July 1, 1996. On September 1, 1998, (63 FR 45966, August 28, 1998), the POP limit converted to a 1-month cumulative trip limit of 4,000 lb (1,814 kg). Landings of POP in 1998 were projected to be below its 650 mt HG. The 1999 OY is set at 500 mt to accommodate incidental catches without encouraging a target fishery on POP. To discourage POP targeting, POP limits will be set for one-month periods, rather than for varying-length periods within the new 3-phase system. The monthly cumulative limit for POP remains the same as in 1998 at 4,000 lb (1,814 kg). POP is currently managed to achieve a rebuilding schedule, so trip limits will not be increased during the year to achieve the OY.

Open access. Landings of POP in the open access fishery were managed in 1998 with a monthly limit that was 50 percent of the limited entry limit. On October 1, 1998 (63 FR 53313, October 5, 1998), all open access landings of rockfish, including POP, were closed north of Cape Blanco. There is no specific open access allocation for POP because historic harvests of POP by this fleet have been very low. In 1999, the open access monthly cumulative limit for POP will be 100 lb (45 kg).

Sablefish

The sablefish OY is subdivided among several fisheries. The tribal fishery allocation is set aside before dividing the balance of the OY between the commercial limited entry and open access fisheries. The limited entry allocation is further subdivided into trawl (58 percent) and nontrawl (42 percent) allocations. Trawl-caught sablefish are managed together with Dover sole and thornyheads because they often are caught together by trawl vessels.

DTS complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)

Limited entry. In January–February 1998 (63 FR 419, January 6, 1998), the

2-month cumulative trip limit for the DTS complex was 59,000 lb (26,762 kg). Within this 2-month cumulative limit, no more than 40,000 lb (18,144 kg) could be Dover sole, no more than 10,000 lb (4,536 kg) could be longspine thornyheads, no more than 4,000 lb (1,814 kg) could be shortspine thornyheads, and no more than 5,000 lb (2,268 kg) could be trawl-caught sablefish. Throughout the year, no more than 500 lb (227 kg) per trip could be sablefish smaller than 22 inches (56 cm).

At certain times of year, particularly in winter months, it is possible to catch Dover sole in deep water more selectively, without large associations of sablefish and shortspine thornyheads. Therefore, the Dover sole 2-month cumulative trip limit was set high for January–February 1998 and lowered on March 1, 1998, to 18,000 lb (8,165 kg). The 2-month cumulative trip limit for the DTS complex correspondingly decreased to 37,000 lb (16,783 kg) on March 1, 1998.

Due to difficult winter weather, landings for the DTS species were well below projections for the first quarter of 1998. The limits were increased on May 1, 1998 (63 FR 24970, May 6, 1998), to allow the fishery the opportunity to achieve the HGs for these species. The 2-month cumulative trip limits were increased for Dover sole to 22,000 lb (9,979 kg); for longspine thornyheads to 12,000 lb (5,443 kg); for shortspine thornyheads to 5,000 lb (2,268 kg), and; for trawl-caught sablefish to 6,000 lb (2,722 kg). Also on May 1, NMFS removed the overall DTS complex limit, because that limit had been a remnant of pre-1998 management, when there was no specific cumulative limit for longspine thornyheads within the complex limit.

On September 1 (63 FR 45966, August 28, 1998), the 2-month cumulative trip limits for the components of the DTS complex were converted to 1-month cumulative limits: for Dover sole, 11,000 lb (4,990 kg); for longspine thornyheads, 6,000 lb (2,722 kg); for shortspine thornyheads, 2,500 lb (1,134 kg); for trawl-caught sablefish, 3,000 lb (1,361 kg).

On October 1 (63 FR 53313, October 5, 1998), limits in the DTS complex were adjusted to account for the different harvest rates for each species. The 1-month cumulative trip limits were: increased for Dover sole to 18,000 lb (8,165 kg); increased for longspine thornyheads to 7,500 lb (3,402 kg); decreased for shortspine thornyheads to 1,500 lb (680 kg); and increased for trawl-caught sablefish to 5,000 lb (2,268 kg). Finally, on December 1 (63 FR 64209, November 19, 1998), the Dover sole monthly cumulative limit was increased to 36,000 lb (16,329 kg) in recognition of the ease of targeting Dover sole without catching other species in the winter months, and so that the limited entry fishery might have further access to the Dover sole HG for 1998.

Projected landings for Dover sole, longspine thornyheads, and for trawl-caught sablefish were below the HGs for those species, primarily because the cumulative limits for those species had to be kept low enough to prevent overharvest of the closely associated shortspine thornyheads. Projected landings of shortspine thornyheads are 2.3 percent above its 1998 HG.

The landed catch objective for sablefish north of 36° N. lat. is increased from 4,680 mt in 1998 to 7,127 mt in 1999, with proportional increases in the allocations (see footnote e/ of Table 1 to this document). The 1999 trawl allocation was therefore increased from 2,282 mt in 1998 to 3,475 mt in 1999. Unless modified inseason, the 1999 trawl-caught sablefish cumulative trip limits in the new three-phase management system will be: 13,000 lb (5,897 kg) in January–March; 10,000 lb (4,536 kg) in each 2-month period of April–May, June–July, and August–September; and 6,000 lb (2,722 kg) in each month for October, November, and December. The 500-lb (227 kg) trip limit for sablefish smaller than 22 inches (56 cm) remains in effect. The OY was set at 472 mt for sablefish south of 36° N. lat., equal to the ABC, which is based on historical landings in that area. Limits for DTS species apply coastwide, including waters south of 36° N. lat.

In 1999, the landed catch objective for Dover sole remains at 8,955 mt, resulting in an OY of 9,426 mt for total catch. As mentioned above, during the winter months, it is possible to catch Dover sole more selectively, without large associations of sablefish and thornyheads. Therefore, Dover sole limits will be more liberal in the winter months than during times when Dover sole are more closely associated with the other species in the DTS complex. Unless modified inseason, the 1999 Dover sole cumulative trip limits in the new three-phase management system will be: 70,000 lb (31,752 kg) in January–March; 20,000 lb (9,072 kg) in each 2-month period of April–May, June–July, and August–September; and 22,000 lb (9,979 kg) in each month for October, November, and December.

In 1999, the landed catch objective for longspine thornyheads remains at 3,733 mt, resulting in a total catch OY of 4,102 mt north of 36° N. lat. For the northern portion of the Conception management area, from 36° N. lat. southward to Pt. Conception (34°27′ N. lat.), the landed catch objective remains at 390 mt, corresponding to a total catch OY of 429 mt. There is no ABC or OY for waters south of Pt. Conception. Because longspine and shortspine thornyheads are so closely associated, longspine thornyhead cumulative trip limits are conservative to protect shortspine from overharvest. A ratio of 4 longspine thornyhead lbs to 1 shortspine thornyhead lb is set for each cumulative trip limit phase, which approximates the co-occurrence of the two species, but also recognizes the ability of some fishers to move to deeper water and catch a higher proportion of longspines. As a result of this ratio, longspine thornyhead cumulative limits are lower than limits that would allow the fishery to catch the full 1999 harvest guideline. Unless modified inseason, the 1999 longspine thornyhead cumulative trip limits in the new three-phase management system will be: 12,000 lb (5,443 kg) in January–March; 8,000 lb (3,629 kg) in each 2-month period of April–May, June–July, and August–September; and 4,000 lb (1,814 kg) in each month for October, November, and December.

In 1999, the landed catch objectives for shortspine thornyheads north of 36° N. lat. is 805 mt (much lower than the 1,082 mt HG in 1998), which corresponds with a total catch OY of 1,150 mt in 1999. The landed catch objective for the northern portion of the Conception management area, from 36° N. lat. southward to Pt. Conception (34°27′ N. lat.) of 123 mt (which corresponds to a 175 mt total catch OY) is slightly higher than the 113 HG in 1998. There is no OY south of Pt. Conception. Unless modified inseason, the 1999 shortspine thornyhead cumulative trip limits in the new three-phase management system will be: 3,000 lb (1,361 kg) in January–March; 2,000 lb (907 kg) in each 2-month period of April–May, June–July, and August–September; and 1,000 lb (454 kg) in each month for October, November, and December.

Open access. On January 1, 1998, no landings of thornyheads were allowed north of Pt. Conception, and a 50-lb (23 kg) daily trip limit applied south of Pt. Conception. On May 1 (63 FR 24970, May 6, 1998), a small allowance was made for vessels participating in the pink shrimp trawl fishery north of Pt. Conception, allowing a 100 lb (45 kg) landing limit. This limit was instituted because it was expected to allow retention of over 90 percent of the thornyheads that would otherwise have

been discarded by the open access fishery. As a result of this limit, however, the pink shrimp trawl fishery landings of thornyheads exceeded the open access thornyhead allocations. Open access landings of Dover sole were managed under monthly cumulative trip limits equal to 50 percent of limited entry 2-month cumulative limits throughout the year. In 1998, the open access sablefish fishery was managed with daily trip limits of 300 lb (136 kg) north of 36° N. lat. and 350 lb (159 kg) south of 36° N. lat., which applied to all open access gear. In addition, the exempted trawl fisheries could not exceed monthly cumulative sablefish limits that were equal to 50 percent of the trawl-caught sablefish 2-month cumulative limits. In 1999, open access limits for DTS species are simpler and apply to all gears. The Dover sole monthly cumulative limit will be 100 lb (45 kg), no thornyheads may be landed north of Pt. Conception, the thornyhead limit south of Pt. Conception will remain at 50 lb (23 kg) per day. All 1999 open access sablefish landings north of 36° N. lat. will be managed under a 300 lb (136 kg) daily trip limit and an 1,800 lb (816 kg) 2-month cumulative limit. All open access sablefish landings south of 36° N. lat. will be managed under a 350 lb (159 kg) daily trip limit. Exempted trawl gear sablefish landings are managed under the same limits as all other open access gears.

Nontrawl Sablefish

Limited entry, nontrawl sablefish north of 36° N. lat. In 1997, a vessel was required to have an endorsement on its limited entry permit in order to participate in the regular or mop-up sablefish seasons (62 FR 34670, August 27, 1997). This endorsement program was refined in 1998 to a three-tier system that divided vessels with sablefish endorsements into three different tiers based on cumulative catch history (63 FR 38101, July 15, 1998). Each of the three tiers was associated with a different cumulative limit level, which tier members had the opportunity to fish towards during the regular season. Also new in 1998, the post-season closure was reduced from 48 to 30 hours. The season began on August 1, 1998, and the cumulative limit levels were: 52,000 lb (23,587 kg) for Tier 1; 23,500 lb (10,660 kg) for Tier 2; and 13,500 lb (6,124 kg) for Tier 3.

A number of provisions for the 1997 regular season remained in place for 1998. The pre-season closure was 48 hours, and advance set of pot gear was not allowed. The regular season ended at sea rather than at dockside. The trip limit for sablefish smaller than 22 inches (56 cm) of 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, remained in effect during the regular and mop-up seasons. The mop-up season began about 3 weeks after the close of the regular season, lasting from August 28-September 11, 1998, and allowing limited entry permit holders with sablefish endorsements to fish against an equal cumulative limit of 3,200 lb (1,452 kg) (63 FR 45764, August 27, 1998).

Small daily trip limits were applied to the nontrawl fishery before and after the ''regular'' and ''mop-up'' seasons. A 300-lb (136-kg) daily trip limit was applied only north of 36°00′ N. lat., with a 2-month cumulative limit of 1,500 lb (680 kg). Unlike 2-month cumulative limits for other species and gear, nontrawl sablefish cumulative limits could be taken at any time during the 2-month period. On May 1 (63 FR 24970, May 6, 1998), the 2-month cumulative limit was increased from 1,500 lb (680 kg) to 1,800 lb (816 kg). Following the September Council meeting, trip limits were again increased to allow the limited entry nontrawl fishery to achieve its 1,652 mt sablefish allocation by the end of the year. The 2-month limit for the September–October period was increased to 2,700 lb (1,225 kg), and the months of November and December were split into 2 separate month-long cumulative limit periods, each with a cumulative limit of 1,500 lb (680 kg) (63 FR 53313, October 5, 1998).

Due to the increase in the sablefish OY in 1999, the limited entry nontrawl allocation for sablefish north of 36° N. lat. is increased from 1,652 mt in 1998 to 2,516 mt in 1999. In 1999, the same daily trip limits for the limited entry fishery will apply outside the regular and mop-up seasons and any closures, and the cumulative limit is increased to 2,400 lb (1,089 kg) per 2-month period (excluding any harvest in the regular or mop-up seasons). The Council plans to make recommendations on the start date, duration, and tiered cumulative limits for the regular fishery at its April 1999 meeting in Sacramento, CA.

Limited Entry, Nontrawl Sablefish South of 36° N. lat. In January 1998, the Conception area limited entry daily trip limit was set at 350 lb (159 kg) to accommodate most landings without encouraging excessive effort shifts into that area. There was no cap on the cumulative amount that could be landed under the daily trip limit in the Conception area. On May 3, 1998, an option was provided that allowed a vessel to either land 350 lb (159 kg) per day, or to make one landing a week of above 350 lb (159 kg) but less than 1,050 lb (476 kg) (63 FR 24970, May 6, 1998). This measure was intended to allow greater flexibility for nontrawl fishers who target groundfish on fishing trips of several days in duration. In 1999, the sablefish landed catch objective for south of 36° N. lat. will remain at 425 mt (corresponding to a total catch OY of 472 mt), and the management measures will also remain at the choice of either 350 lb (159 kg) per day with no monthly limit, or one landing per week of greater than 350 lb (159 kg) but less than 1,050 lb (476 kg).

Open access. The open access sablefish allocation for north of 36° N. lat. is 6.6 percent of the commercial OY of 6,414 mt. Similar to the limited entry, nontrawl fishery for sablefish, the open access nontrawl fishery north of 36° N. lat. is managed with 300 lb (136 kg) daily trip limits and 2-month cumulative limits. In 1998, the open access fishery began the year with a 2-month cumulative limit of 600 lb (272 kg), which stayed in place until May 1 (63 FR 24970, May 6, 1998), when it was increased to 700 lb (318 kg) per 2-month period. As with the limited entry daily trip limit fishery, open access daily trip limit landings of sablefish were proceeding at a slower rate than the Council had expected at the beginning of the year. On July 1 (63 FR 36612, July 7, 1998), the open access 2-month cumulative limit was again increased to 1,800 lb (816 kg), a level that matched the limited entry 2-month cumulative limit. October and November (63 FR 53313, October 5, 1998) changes to the open access daily trip limit fishery for sablefish matched the changes to the limited entry daily trip limit fishery for the rest of the year: the 2-month limit for the September–October period was increased to 2,700 lb (1,225 kg), and the months of November and December were split into two separate month-long cumulative limit periods, each with a cumulative limit of 1,500 lb (680 kg). Open access nontrawl fisheries for sablefish south of 36° N. lat. were managed under a 350 lb (159 kg) daily trip limit with no monthly cumulative limit throughout 1998. In 1999, open access fisheries north and south of 36° N. lat. will continue to be managed as daily trip limit fisheries. North of 36° N. lat., there will be a 300 lb (136 kg) daily trip limit and a 2-month cumulative limit of 1,800 lb (816 kg). South of 36° N. lat., the 350 lb (159 kg) daily trip limit with no monthly cumulative limit will remain in effect.

Whiting. Landings projections indicate that the 1998 whiting fisheries catches will be very close to the whiting OY of 232,000 mt: 87,548 mt by the shore-based fleet; 70,364 mt by the

catcher/processing sector; 50,086 mt by the non-tribal mothership sector, and about 25,000 mt by the Makah tribal fishery. The 10,000-lb (4,536-kg) trip limit for whiting taken before and after the regular whiting season and inside the 100-fathom (183-m) contour in the Eureka subarea (40°30′–43°00′ N. lat.) continues in effect in 1999. Additional regulations, including the percentages used to allocate whiting among non-tribal sectors (42 percent to the shore-based sector, 24 percent to the mothership sector, and 34 percent to catcher/processors), are found at 50 CFR 660.323(a)(4). Proposals for the tribal allocation of whiting are discussed elsewhere in this **Federal Register** issue and final allocations will be calculated after the final ABC, OY, and tribal allocations are recommended at the Council's March 1999 meeting.

Whiting seasons. The opening dates of the 1999 primary seasons for whiting are the same as in 1998, and are announced in this document at paragraph IV.B.(5)(b). The catcher/processor sector and the mothership sector fisheries will begin on May 15; and the shore-based sector will begin on April 1, between 42°–40°30′ N. lat., on April 15 south of 40°30′ N. lat., and on June 15 north of 42° N. lat.

Lingcod

The 1998 HG for lingcod was severely reduced from previous years' levels to 838 mt. During Council activities to set 1998 cumulative limits, the U.S. industry disagreed as to whether the lingcod reduction should or could fall equally on both commercial and recreational sectors. The 1998 management measures were intended to divide the HG almost equally between the commercial and recreational sectors, which resulted in a proportionately larger decrease over past years' catch for the commercial fishery. To accommodate the reduced amount of lingcod available to the commercial sector in 1998, the 2-month cumulative trip limit for lingcod in 1998 was 1,000 lb (454 kg). This limit was in place throughout 1998, although it was modified to a monthly cumulative limit of 500 lb (227 kg) on September 1 (63 FR 45966, August 28, 1998).

The open access lingcod 2-month cumulative limit was 1,000 lb (454 kg) until July 1, when it was modified to account for unusually rapid harvest rates to 250 lb (113 kg) for the month of July, and to a prohibition against all open access lingcod landings beginning August 1 (63 FR 36612, July 7, 1998). Throughout the year, lingcod smaller than 24 inches (61 cm) could not be landed in the commercial or recreational fisheries except for 100-lb (45-kg) per trip for limited entry trawl-caught lingcod, which allowed dead fish to be landed. This increase from 22 inches (56 cm) in 1997 to 24 inches (61 cm) in 1998 in the size limit, along with a reduction in the recreational bag limit off California from five to three lingcod was expected to reduce recreational lingcod harvest. Reducing the California lingcod bag limit brought that state's bag limit down to a level consistent with bag limits off Washington and Oregon.

In 1999, the landed catch objective for lingcod is again reduced, from 838 mt in 1998 to 666 mt in 1999, corresponding to a total catch OY of 730 mt. Lingcod populations are estimated to be at 9 percent of the unfished biomass level, which means that the stock is overfished. Although this is an extremely low biomass level, lingcod have responded well to stock rebuilding efforts for critically depressed stocks in Puget Sound and elsewhere, thus managers are optimistic about stock rebuilding for Pacific waters. The Council's management recommendations for 1999 were based on a desire to continue the 1998 policy of discouraging targeting while allowing some retention of incidentally-caught lingcod. Thus, the Council recommended continuing the restrictive 1998 commercial management measures of 500 lb (227 kg) per month into 1999. For 1999, the Council concentrated on spreading the open access lingcod catch throughout the year, and on reducing recreational lingcod landings.

The Council discussed several different management measures, including closing lingcod fisheries during the December-March period when male lingcod are guarding nests of lingcod eggs, and setting a maximum size for lingcod retention of 34 inches (86 cm) to protect the largest and most fecund females. However, during its deliberations and from public testimony, the Council determined that there are few fish caught that are larger than 34 inches (86 cm), thus setting a maximum size for lingcod would have been an empty gesture in stock rebuilding efforts. During Council discussions on a shortened lingcod season, it became clear that Washington and Oregon fisheries rarely target lingcod during the winter months, primarily because weather conditions preclude a winter recreational fishery and hamper commercial fishing from many of the smaller vessels in the fleet. Southern California recreational fisheries do target lingcod in the winter months, and a complete closure of recreational lingcod landings for December-March would have a dramatic negative economic impact on Southern California recreational fisheries. After much discussion, the Council recommended a coastwide two fish bag limit for all recreational fisheries, which is expected to lower the recreational lingcod take from 438 mt in 1998 to 310 mt in 1999. Commercial open access lingcod landings will be curtailed to an 8-month season of April 1–November 30 to allow a 250 lb (113 kg) per month cumulative limit during the months when most open access fishers would be catching lingcod. (The Council expected that if the open access fisheries had 12 months to land lingcod, the monthly cumulative lingcod limit would have been 150 lb (68 kg).) Unless modified inseason, the 1999 limited entry lingcod cumulative trip limits in the new three-phase management system will be: 1,500 lb (680 kg) in January–March; 1,000 lb (454 kg) in each 2-month period of April–May, June–July, and August–September; and 500 lb (227 kg) in each month for October, November, and December. As in 1998, limited entry trawl vessels may land up to 100 lb (45 kg) per trip of lingcod smaller than 24 inches (61 cm) total length (TL)

Black Rockfish

Black rockfish off the State of Washington continue to be managed under the regulations at 50 CFR 660.323(a)(1) for non-tribal limited entry and open access fisheries. The State of Oregon implements trip limits for black rockfish off the Oregon coast. In addition, black rockfish harvests are counted toward overall *Sebastes* cumulative limits.

Operating in Both Limited Entry and Open Access Fisheries Vessels using open access gear are subject to the management measures for the open access fishery, regardless of whether the vessel has a valid limited entry permit endorsed for any other gear.

A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit. For example: In January, a trawl vessel catches 13,000 lb (5,897 kg) of sablefish in the limited entry fishery, and in the same month catches 300 lb (136 kg) of sablefish with shrimp trawl (open access) gear, for a total of 13,300 lb (6,033 kg) of sablefish. Because the open access landings are counted toward that vessel's limited entry limit, the vessel would have exceeded its limited entry, cumulative limit of 13,000 lb (5,897 kg) for the first fishing phase, January 1 through March 31, 1999.

Operating in Areas with Different Trip Limits.

Trip limits may differ for a species or species complex at different locations on the coast. Unless otherwise stated (as for black rockfish or for species with daily trip limits), the cross-over provisions at paragraph IV.A.(12) apply. In general, a vessel fishing for groundfish in a more restrictive area is subject to the more restrictive limit for the duration of that trip limit period.

Changes to Trip Limits; Closures

Unless otherwise stated (as for the nontrawl sablefish regular season; see 50 CFR 660.323(a)(2)), a vessel must have initiated offloading its catch before the fishery is closed or before a more restrictive trip limit becomes effective. As in the past, all fish on board the vessel when offloading begins are counted toward the landing limits (See 50 CFR 660.302 for the definition of ''landing'').

Designated Species B Permits

Designated species B permits may be issued if the limited entry fleet will not fully utilize the OY for Pacific whiting, shortbelly rockfish, or jack mackerel north of 39° N. lat. The limited entry fleet has requested the full use of these species in 1999. In addition, since no applications were received before the November 1 deadline, NMFS does not expect to issue Designated Species B permits in 1999.

Recreational Fishing

Bag limits for rockfish remain the same in 1999 as in 1998: in California, no more than 15 rockfish per day, of which no more than 3 may be bocaccio; in Oregon, 15 rockfish per day, of which no more than 10 may be black rockfish; and in Washington, 10 rockfish per day. The lingcod daily bag limit is reduced for all states from 3 to 2 fish, but the lingcod size limit remains at 24 inches (61 cm) TL.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 1999, including those that are the same as in 1998.

A. General Definitions and Provisions

The following definitions and provisions apply to the 1999 management measures, unless otherwise specified in a subsequent notice:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as explained below.

(a) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only two landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

(i) *Limited entry fishery.* Unless otherwise specified, cumulative trip limits in the limited entry fishery are applied over the course of the year in 3 separate phases that differ by length of the cumulative trip limit period. The cumulative trip limit may be taken at any time within the applicable cumulative trip limit period. All cumulative trip limit periods start at 0001 hours, local time, on the specified beginning date. (The 60:40 provisions in effect in 1998 that limited a vessel to no more than 60 percent of its 2-month cumulative trip limit in any 2 of the 2 months in the period no longer apply.) The choice of platoon (see paragraph D) applies throughout the year.

(A) The phases and cumulative trip limit periods for 1999 are as follows:

(*1*) In phase 1, the cumulative trip limits apply to a single 3-month period, from January 1–March 31, 1999.

(*2*) In phase 2, the cumulative trip limits apply to the following 2-month periods: April 1–May 31, 1999; June 1–July 31, 1999; August 1–September 30, 1999.

(*3*) In phase 3, the cumulative trip limits apply to the following 1-month periods: October 1–31, 1999; November 1–30, 1999; December 1–31, 1999.

(B) *Exceptions.* These cumulative trip limit periods do not apply to sablefish taken with nontrawl gear, Pacific whiting, Pacific ocean perch, or bocaccio. Pacific ocean perch and bocaccio are managed under 1-month cumulative limit periods, which are identical to the 1-month cumulative limit periods defined for the open access fishery at paragraph A(1)(c)(ii), below.

(C) *Permit transfers.* For the purposes of the restriction that limited entry permit transfers are to take effect only on the first day of a major cumulative limit period (50 CFR § 660.333(c)(1)), those days in 1999 are January 1, April 1, June 1, August 1, October 1, November 1, and December 1.

(D) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the ''A'' platoon, unless the ''B'' platoon is indicated on the limited entry permit. If a vessel is in the ''A'' platoon, its cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the ''B'' platoon, then cumulative trip limit periods will begin on the 16th of the month (generally 2 weeks later than for the ''A'' platoon), unless otherwise specified.

(*1*) For a vessel in the ''B'' platoon, cumulative trip limit periods begin on the 16th of the month at 0001 hours, local time, and end on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 1999, for the ''A'' platoon will be effective on January 16, 1999, for the ''B'' platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the ''B'' platoon, unless otherwise specified.

(*2*) A vessel authorized to operate in the ''B'' platoon may take and retain, but may not land, groundfish from January 1, 1999, through January 15, 1999.

(*3*) Special provisions will be made for ''B'' platoon vessels later in the year so that the amount of fish made available in 1999 to both ''A'' and ''B'' vessels is the same. (For example, a vessel in the ''B'' platoon could have the same cumulative trip limit for the final period as a vessel in the ''A'' platoon, but the final period may be 2 weeks shorter, so that both fishing periods end on December 31, 1999. Alternatively, the ''B'' platoon may have 6 weeks to take the cumulative limits from the final 2 cumulative limit periods.)

(ii) *Open access fishery.* Unless otherwise specified (as for sablefish north of 36° N. lat.), cumulative trip limits in the open access fishery apply to 1-month periods in 1999, as follows: January 1–31, February 1–28, March 1–31, April 1–30, May 1–31, June 1–30, July 1–31, August 1–31, September 1–30, October 1–31, November 1–30, December 1–31.

(2) Unless the fishery is closed, a vessel that has landed its cumulative, daily, or weekly limit may continue to fish on the limit for the next legal

period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated at 50 CFR 660.302 (in the definition of ''landing''), once offloading of any species begins, all fish aboard the vessel are counted as part of the landing.

(3) All weights are round weights or round-weight equivalents unless otherwise specified.

(4) Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) ''Legal fish'' means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660, the Magnuson-Stevens Act, any notice issued under part 660, and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods.

(a) For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) For a fish with the head removed (''headed''), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(7) ''Closure,'' when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See 50 CFR 660.302.) Unless otherwise announced in the **Federal Register**, offloading must begin before the time the fishery closes. [Note: Special provisions are made for an at-sea closure at the end of the regular season for the sablefish limited entry fishery. See 50 CFR 660.323(a)(2).]

(8) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) Inseason changes to trip limits are announced in the **Federal Register**. Most trip and bag limits in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. Information concerning changes to trip limits is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit.

(12) *Operating in areas with different trip limits.* Trip limits for a species or species complex may differ in different geographic areas along the coast. The following ''crossover'' provisions apply to vessels operating in different geographical areas that have different cumulative or ''per trip'' trip limits for the same species or species complex. They do not apply to species that are subject only to daily trip limits, or to the trip limits for black rockfish off the State of Washington (see 50 CFR 660.323(a)(1)). In 1999, the cumulative trip limit periods for the limited entry fishery are specified in paragraph A(1)(c)(i)(A), and the cumulative trip limit period for the open access fishery is 1 calendar month, unless otherwise specified (see paragraph A(1)(c)(ii)).

(a) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any species of groundfish in an area where a more restrictive trip limit applies, before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and takes and retains, possesses or lands the same species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

(13) *Sorting.* It is unlawful for any person to ''fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, or harvest guideline, if the vessel fished or landed in an area during a time when such trip limit, size limit, harvest guideline, or quota applied.'' This provision applies to both the limited entry and open access fisheries. (See 50 CFR 660.306(h), effective July 27, 1998.)

(14) *Exempted fisheries.* U.S. vessels operating under an exempted (formerly experimental) fishing permit issued under 50 CFR part 600 also are subject to these restrictions, unless otherwise provided in the permit.

(15) Paragraphs IV.B. through IV.C. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries, which are described in paragraph V. The provisions in paragraphs IV.B. through IV.C. that are not covered under the headings ''limited entry'' or ''open access'' apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.D. pertains to the recreational fishery.

(16) *Commonly used geographical coordinates.*

(a) Cape Falcon, OR—45°46′ N. lat.

(b) Cape Lookout, OR—45°20′15″ N. lat.

(c) Cape Blanco, OR—42°50′ N. lat.

(d) Cape Mendocino, CA—40°30′ N. lat.

(e) Point Arena, CA—38°57′30″ N. lat.

(f) Point Conception, CA—34°27′ N. lat.

(g) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304):

(i) Vancouver—U.S.-Canada border to 47°30′ N. lat.

(ii) Columbia—47°30′ to 43°00′ N. lat.

(iii) Eureka—43°00′ to 40°30′ N. lat.

(iv) Monterey—40°30′ to 36°00′ N. lat

(v) Conception—36°00′ N. lat. to the U.S.-Mexico border.

B. Limited Entry Fishery

As described in paragraph IV.A.(1)(c)(i), all species landed in limited entry fisheries except for sablefish taken with nontrawl gear, whiting, Pacific ocean perch, and bocaccio will be managed under a phased, cumulative trip limit system. Cumulative limits for each species in each phase are provided in tables below and may be changed during the year.

(1) *Widow rockfish* (commonly called brownies). The cumulative trip limit for widow rockfish is as follows, unless otherwise announced in the **Federal Register**:

TABLE 2.—WIDOW ROCKFISH

Fishing phase	Cumulative trip limit periods	Cumulative trip limit (in pounds)	Length of cumulative trip limit period
I	Jan 1–Mar 31	70,000 31,752 kg	3 months
II	Apr 1–May 31	16,000	2 months
	June 1–July 31	16,000	2 months
	Aug 1–Sept 30	16,000 7,257 kg	2 months
III	Oct 1–31	30,000	1 month
	Nov 1–30	30,000	1 month
	Dec 1–31	30,000 13,608 kg	1 month

(2) *Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish).*

(a) *General. Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), *Sebastolobus* spp. (also called thornyheads, idiots, or channel rockfish), and chilipepper (*Sebastes goodei*) south of Cape Mendocino, and splitnose rockfish (*S. diploproa*) south of Cape Mendocino. Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bocaccio (*S. paucispinis*) are commonly called rock salmon. Canary rockfish (*S. pinniger*) are commonly called orange rockfish. Splitnose rockfish are commonly called rosefish. This definition also applies for the open access fishery. In areas where certain species are not abundant, they are included in the ''other rockfish'' or ''remaining rockfish'' categories in Table 1. to this document, and they are constrained by the overall trip limits for the *Sebastes* complex. These species are yellowtail in the Eureka-Monterey-Conception area, and bocaccio, chilipepper, and splitnose rockfish in the Vancouver-Columbia area.

(b) *Trip limits for the Sebastes complex.* Harvest of all *Sebastes* complex species (except bocaccio), including those species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino.

(i) *Trip limits for the Sebastes complex except bocaccio.* The cumulative trip limits for the *Sebastes* complex and its component species are as follows, unless otherwise announced in the **Federal Register**:

TABLE 3.—SEBASTES COMPLEX AND ITS COMPONENT SPECIES

[Except bocaccio]

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)				Length of cumulative trip limit period
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	Canary rockfish [1] (coastwide)	
		North	South			
I	Jan. 1–Mar. 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)	9,000 (4,082 kg)	3 months.
II	Apr. 1–May 31	25,000	6,500	13,000	9,000	2 months.
	June 1–July 31	25,000	6,500	13,000	9,000	2 months.
	Aug. 1–Sept. 30	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5,897 kg)	9,000 (4,082 kg)	2 months.
III	Oct. 1–31	10,000	5,000	5,000	3,000	1 month.
	Nov. 1–30	10,000	5,000	5,000	3,000	1 month.
	Dec. 1–31	10,000 (4,536 kg)	5,000 (2,268 kg)	5,000 (2,268 kg)	3,000 (1,361 kg)	1 month.

[1] Also counts toward the overall *Sebastes* complex limit.

(ii) *Bocaccio trip limits within the Sebastes complex.* Within the cumulative trip limits for the *Sebastes* complex south of Cape Mendocino, no more than 750 lb (340 kg) per month may be bocaccio. For definition of one-month trip limit periods, see preceding paragraph A(1)(c)(ii).

(3) *POP.* The cumulative trip limit for POP is 4,000 lb (1,814 kg) per vessel per one-month period. For definition of one-

month trip limit periods, see paragraph A(a)(c)(ii), above.

(4) *Chilipepper rockfish.* The cumulative trip limit for chilipepper rockfish south of Cape Mendocino is as follows, unless otherwise announced in the **Federal Register**:

TABLE 4.—CHILIPEPPER ROCKFISH
[South of Cape Mendocino]

Fishing phase	Cumulative trip limit periods	Cumulative trip limit (in pounds)	Length of cumulative trip limit period
I	Jan. 1–Mar. 31	45,000 20,412 kg	3 months.
II	Apr. 1–May 31	25,000	2 months.
	June 1–July 31	25,000	2 months.
	Aug. 1–Sept. 30	25,000 11,340 kg	2 months.
III	Oct. 1–31	18,000	1 month.
	Nov. 1–30	18,000	1 month.
	Dec. 1–31	18,000 8,165 kg	1 month.

(5) *Splitnose rockfish.* The cumulative trip limit for splitnose rockfish south of Cape Mendocino is as follows, unless otherwise announced in the **Federal Register**:

TABLE 5.—SPLITNOSE ROCKFISH (ROSEFISH)
[South of Cape Mendocino)

Fishing phase	Cumulative trip limit periods	Cumulative trip limit	Length of cumulative trip limit period
I	Jan 1–Mar 31	32,000 14,515 kg	3 months.
II	Apr 1–May 31	19,000	2 months.
	June 1–July 31	19,000	2 months.
	Aug 1–Sept 30	19,000	2 months.
III	Oct 1–31	10,000	1 month.
	Nov 1–30	10,000	1 month.
	Dec 1–31	10,000 4,536 kg	1 month.

(6) *Sablefish and the DTS complex (Dover sole, thornyheads, and trawl-caught sablefish).*

(a) *1999 Sablefish Management goal.* The limited entry sablefish fishery will be managed to achieve the 1999 commercial OYs of 7,127 mt north of 36° N. lat. and 425 mt south of 36° N. lat.

(b) *Gear allocations.* After subtracting the tribal-imposed catch limit and the open access allocation from the OY for sablefish north of 36° N. lat., the remainder is allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

[*Note.*—The 1999 ABC for sablefish north of 36° N. lat. is 9,692 mt. The trawl allocation is 3,475 mt and the nontrawl allocation is 2,516 mt. See footnote e/ of Table 1 to this document.]

(c) *Limited entry trip and size limits for the DTS complex.* ''DTS complex'' means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads are also called idiots, channel rockfish, or hardheads, and include 2 species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear. The cumulative trip limits for the DTS complex are as follows, unless otherwise announced in the **Federal Register**:

TABLE 6.—TDS COMPLEX
[Coastwide]

Phase	Cumulative trip limit periods	Cumulative Trip Limits (in pounds)				Length of cumulative trip limit period
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish[1] cumulative trip limit	
I	Jan 1–Mar 31	70,000 (31,752 kg)	12,000 (5,443 kg)	3,000 (1,361 kg)	13,000 (5,897 kg)	3 months

TABLE 6.—TDS COMPLEX—Continued

[Coastwide]

Phase	Cumulative trip limit periods	Cumulative Trip Limits (in pounds)				Length of cumulative trip limit period
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish [1] cumulative trip limit	
II	Apr 1–May 31	20,000	8,000	2,000	10,000	2 months.
	June 1–July 31	20,000	8,000	2,000	10,000	2 months.
	Aug 1-Sept 30	20,000	8,000	2,000	10,000	2 months.
		(9,072 kg)	(3,629 kg)	(907 kg)	(4,536 kg)	
III	Oct 1–31	22,000	4,000	1,000	6,000	1 month
	Nov 1–30	22,000	4,000	1,000	6,000	1 month
	Dec 1–31	22,000	4,000	1,000	6,000	1 month
		(9,979 kg)	(1,814 kg)	(454 kg)	(2,722 kg)	

[1] At any time of year unless otherwise announced, no more than 500 lb (227 kg) per trip may be trawl-caught sablefish smaller than 22 inches (56 cm) TL. (See paragraph IV.A.(6) regarding length measurement.)

(d) *Nontrawl trip and size limits.* To take, retain, possess, or land sablefish during the regular, or mop-up season for the nontrawl limited entry sablefish fishery, the owner of a vessel must hold a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement. See 50 CFR 663.23(a)(2)(i). A sablefish endorsement is not required to participate in the limited entry daily trip limit fishery.

(i) *Regular and mop-up seasons.* Starting and ending dates for the regular and mop-up seasons (see 50 CFR § 660.323(a)(2)) will be announced inseason.

(ii) *Daily trip limit*—(A) *North of 36° N. lat.* The daily trip limit, which applies to sablefish of any size, is in effect north of 36° N. lat. until the closed periods before or after the regular season as specified at 50 CFR 660.323(a)(2), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36°00′ N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 2,400 lb (1,089 kg) per 2-month period except during the regular and mop-up seasons. The 2-month periods in 1999 are: January 1–February 28; March 1–April 30; May 1–June 30; July 1–August 31; September 1–October 31; November 1–December 31.

(B) *South of 36° N. lat.* The daily trip limit for sablefish taken and retained with nontrawl gear south of 36° N. lat. is either (1) 350 lb (159 kg) with no cumulative limit on the amount of sablefish that may be retained in a month; or (2) one landing of sablefish per week above 350 lb (159 kg) but not to exceed 1,050 lb (476 kg). A week is 7 consecutive days, from 0001 hours local time Sunday through 2400 hours local time Saturday.

(iii) *Limit on small fish.* During the ''regular'' and ''mop-up'' seasons, there is a trip limit in effect for sablefish smaller than 22 inches (56 cm) TL, which may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 22 inches (56 cm) (TL) or larger, whichever is greater. (See paragraph IV.A.(6) regarding length measurement.) This trip limit counts toward any other cumulative trip limit that may be in effect.

(e) *Conversions.* The following conversions apply to both the limited entry and open access fisheries. For headed and gutted (eviscerated) sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) TL for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(7) *Whiting.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and 50 CFR 660.323(a)(3) and (a)(4).

(a) *Allocations.* Whiting allocations will be announced inseason when the final OY is announced.

(b) *Seasons.* The 1999 primary seasons for the whiting fishery start on the same dates as in 1998, as follows (see 50 CFR 660.323(a)(3)):

(i) *Catcher/processor sector*—May 15;

(ii) *Mothership sector*—May 15;

(iii) *Shore-based sector*—June 15 north of 42° N. lat.; April 1 between 42°–40°30′ N. lat.; April 15 south of 40°30′ N. lat.

(c) *Trip limits.*

(i) *Before and after the regular season.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip before and after the regular season for whiting, as specified at 50 CFR 660.323(a)(3) and (a)(4). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka area.

(ii) *Inside the Eureka 100-fm contour.* No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area.

(8) *Lingcod.* The cumulative trip limits for lingcod are as follows, unless otherwise announced in the **Federal Register**.

TABLE 7.—LINGCOD
[Coastwide]

Fishing phase	Cumulative trip limit periods	Cumulative trip limits (in pounds) [1]	Length of cumulative trip limit period
I	Jan 1–Mar 31	1,500 680 kg	3 months.
II	Apr 1–May 31	1,000	2 months.
	June 1–July 31	1,000	2 months.
	Aug 1–Sept 30	1,000 454 kg	2 months.
III	Oct 1–31	500	1 month.
	Nov 1–30	500	1 month.
	Dec 1–31	500 227 kg	1 month.

[1] No lingcod may be smaller than 24 inches (61 cm) TL, except for a 100-lb (45-kg) ''per trip'' limit for trawl-caught lingcod smaller than 24 inches (61 cm). Length measurement is explained at paragraph IV.A.(6).

(b) *Conversions*. The following conversions apply in both limited entry and open access fisheries.

(i) *Size conversion*. For lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) TL for whole fish.

(ii) *Weight conversion*. The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ, and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for lingcod that is headed and gutted, or only gutted, the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(A) *Headed and gutted*. The conversion factor for headed and gutted lingcod is 1.5. (The State of Washington currently uses a conversion factor of 1.5.)

(B) *Gutted, with the head on*. The conversion factor for lingcod that has only been gutted is 1.1.

(9) *Black rockfish*. The regulations at 50 CFR 660.323(a)(1) state: ''The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.'' These limits apply to limited entry and open access fisheries. The crossover provisions at paragraphs IV.A. (12) do not apply. Black rockfish also count toward the overall *Sebastes* cumulative limits described above at B.2.(b).

C. Trip Limits in the Open Access Fishery

Open access gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), California halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. The crossover provisions at paragraph IV.A.(12) that apply to the limited entry fishery apply to the open access fishery as well. The conversions at paragraphs IV.B.(6)(e) for sablefish and IV.B.(8)(b) for lingcod also apply to the open access fishery. The cumulative limit periods defined for the limited entry fishery do not apply to the open access fishery.

(1) *Rockfish*. The following limits for rockfish in this paragraph C.(1) apply to all open access gear, including exempted trawl gear, unless otherwise specified.

(a) *Thornyheads*—(i) *North of Pt. Conception*. Thornyheads (shortspine and longspine) may not be taken and retained, possessed, or landed north of Pt. Conception. [There is no exemption for vessels engaged in fishing for pink shrimp.]

(ii) *South of Pt. Conception*. The daily trip limit for thornyheads (shortspine and longspine) is 50 lb (23 kg).

(b) *Widow rockfish*. The cumulative monthly limit for widow rockfish coastwide is 2,000 lb (907 kg) per vessel.

(c) *POP*. The cumulative monthly limit for POP coastwide is 100 lb (45 kg) per vessel.

(d) *Sebastes complex*—(i) *Cumulative monthly limits*. The cumulative monthly limit for the *Sebastes* complex is 3,600 lb (1,633 kg) per vessel north of Cape Mendocino, and 2,000 lb (907 kg) per vessel south of Cape Mendocino. Within the cumulative trip limit for the *Sebastes* complex, no more than 1,000 lb (454 kg) per month may be canary rockfish coastwide, no more than 2,600 lb (1,179 kg) per month may be yellowtail rockfish north of Cape Mendocino, and no more than 500 lb (227 kg) per month may be bocaccio south of Cape Mendocino (except for setnet or trammel net gear—see IV.C.(1)(d)(ii) below). [Note: Chilipepper and splitnose rockfishes have been removed from the *Sebastes* complex south of Cape Mendocino, and are no longer included in the *Sebastes* trip limits south of Cape Mendocino (see paragraph IV.C.(1)(e) and (f) below).]

(ii) *Setnet or trammel net gear* (legal only south of 38° N. lat.), for setnets or trammel nets, the bocaccio monthly cumulative limit is 1,000 lb (454 kg) and counts toward the *Sebastes* complex monthly cumulative limit. Bocaccio taken with setnet or trammel net also counts toward the overall *Sebastes* complex limit in C.1.(d)(i). [Note: This open access limit is intentionally larger than the limited entry limit of 750 lb (340 kg) per month.]

(e) *Chilipepper*. The cumulative monthly limit for chilipepper south of Cape Mendocino is 6,000 lb (2,722 kg) per vessel.

(f) *Splitnose rockfish (rosefish)*. The cumulative monthly limit for splitnose rockfish south of Cape Mendocino is 100 lb (45 kg) per vessel.

(g) *Black rockfish.* The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies and is counted toward the cumulative *Sebastes* limits. (The black rockfish limit is also stated in paragraph IV.B.7.)

(2) *Sablefish.* The following trip limits apply to all open access gear, including exempted trawl gear.

(a) *North of 36°00′ N. lat.* North of 36°00′ N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 1,800 lb (816 kg) per 2-month period.

(b) *South of 36°00′ N. lat.* The daily trip limit for sablefish taken and retained south of 36°00′ N. lat. is 350 lb (159 kg).

(3) *Lingcod.* From January 1–March 31, 1999, and from December 1–31, 1999, lingcod may not be taken and retained, possessed or landed by any open access gear, including exempted trawl gear, coastwide. From April 1–November 30, 1999, the monthly cumulative limit for lingcod is 250 lb (113 kg) coastwide, which applies to all open access gear, including exempted trawl gear.

(4) *Dover sole.* The monthly cumulative trip limit for Dover sole is 100 lb (45 kg) and applies to all open access gear, including exempted trawl gear.

(5) *Pacific whiting.* The monthly cumulative trip limit for Pacific whiting is 100 lb (45 kg), and applies to all open access gear, including exempted trawl gear.

(6) *Groundfish taken by exempted trawl gear (e.g., by vessels engaged in fishing for pink shrimp, spot and ridgeback prawns, California halibut, and sea cucumbers)*—(a) *Trip limits.* No more than 300 lb (136 kg) of groundfish may be taken per vessel per fishing trip. Limits and closures in paragraphs IV.C(1) through IV.C(5) also apply and are counted toward the 300 lb (136 kg) groundfish limit. The daily trip limits for sablefish (paragraph IV.C.2) and thornyheads south of Pt. Conception (paragraph IV.C.1(a)) may not be multiplied by the number of days of the fishing trip. The groundfish ''per trip'' limit may not be multiplied by the number of days in the fishing trip, although this was allowed in 1998.

(b) *State law.* These trip limits are not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(c) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: ''No California halibut may be taken, possessed or sold which measures less than 22 inches in total length, unless it weighs 4 pounds or more in the round, 3 and one-half pounds or more dressed with the head on, or 3 pounds or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.''

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 for trawl gear;

(ii) All fishing on the trip takes place south of Pt. Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code section 8396, which requires a permit issued by the State of California.

D. Recreational Fishery

(1) *California.* The bag limits for each person engaged in recreational fishing seaward of the State of California are: 2 lingcod per day, which may be no smaller than 24 inches (61 cm) TL; and 15 rockfish per day, of which no more than 3 may be bocaccio. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) *Oregon.* The bag limits for each person engaged in recreational fishing seaward of the State of Oregon are: 2 lingcod per day, which may be no smaller than 24 inches (61 cm) TL; and 15 rockfish per day, of which no more than 10 may be black rockfish (*Sebastes melanops*).

(3) *Washington.* The bag limits for each person engaged in recreational fishing seaward of the State of Washington are: 2 lingcod per day no smaller than 24 inches (61 cm) TL, and 10 rockfish per day.

V. Washington Coastal Tribal Fisheries

In late 1994, the U.S. government formally recognized that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324).

A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The treaty tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries, not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations.

The tribal allocation for black rockfish is the same in 1999 as in 1998. The tribal allocation for sablefish remains at 10 percent of the landed catch OY and is, therefore, increased from 468 mt in 1998 to 713 mt in 1999, to reflect the increase in the OY and its landed catch equivalent.

The proposed alternatives for tribal allocation for whiting are discussed elsewhere in this **Federal Register** issue.

For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, which may not be needed by the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate modest tribal fisheries. For lingcod, all tribal fisheries will be restricted to 300 lb (126 kg) per day. Tribal fisheries are not expected to take more than 1 mt of lingcod in 1999. For the *Sebastes* complex and other rockfish species, the 1999 tribal longline and trawl fisheries will operate under trip and cumulative limits. Tribal fisheries will operate under 300 lb (136 kg) ''per trip'' limits each for canary rockfish and for thornyheads, and under the same trip limits as the limited entry fisheries for all other rockfish. A 300 lb (136 kg) canary rockfish trip limit is expected to result in landings of 10,000–15,000 lb (5–7 mt). A 300 lb (136 kg) thornyhead limit is expected to result in landings of 8,000–10,000 lb (3–5 mt). Because of the small anticipated tribal groundfish catch, the tribes do not plan to reduce trip limits during the year, unless OY's are achieved, or unless inseason catch statistics demonstrate that the tribes have taken half of the available harvest in the tribal U and A fishing areas.

The Assistant Administrator announces the following tribal allocations for 1999, including those that are the same as in 1998. Trip limits for certain species were recommended by the tribes and the Council and are specified here with the tribal allocations:

A. Sablefish

The tribal allocation is 713 mt, 10 percent of the OY.

B. Rockfish

(1) For the commercial harvest of black rockfish off Washington State, a HG of: 20,000 lb (9,072 kg) north of Cape Alava (48°09′30″ N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(2) Thornyheads are subject to a 300 lb (136 kg) trip limit.

(3) Canary rockfish are subject to a 300 lb (136 kg) trip

(4) Other rockfish are subject to the same trip limits as the limited entry fishery.

C. Lingcod

Lingcod taken and retained with any gear are subject to a 300 lb (136 kg) per day trip limit.

Classification

The final specifications and management measures for 1999 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

Because NMFS is not required by 5 U.S.C. 553 or any other law to publish a general notice of proposed rulemaking for this action, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared.

Much of the data necessary for these specifications and management measures came from the current fishing year. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the 1999 fishing year, the Assistant Administrator has determined that there is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment for the specifications and management measures. Amendment 4 to the FMP, implemented on January 1, 1991, recognized these timeliness considerations and set up a system by which the interested public is notified, through **Federal Register** publication and Council mailings, of meetings and of the development of these measures and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in September and November 1998 where these recommendations were formulated. Additional public comments on the specifications and management measures will be accepted for 30 days after publication of this document in the **Federal Register**. During this same period, NMFS also requests public comments on the preliminary whiting ABC and OY, and on the proposals for tribal harvest of Pacific whiting published elsewhere in this **Federal Register** issue. The AA will consider all comments made during the public comment period and may make modifications as appropriate.

There is no time requirement or time burden for the public to come into compliance with the harvest specifications and the management measures designed to achieve those specifications that are announced by this rule. As described above, the interested public has participated in the Council process to formulate these regulations. The Council has provided information to the industry on the above management measures and specifications through the newsletters that it sends to fishery participants, and NMFS has provided notice through the U.S. Coast Guard Notice to Mariners, and the States of Washington, Oregon, and California also disseminate information. Therefore, the Assistant Administrator finds, under 5 U.S.C. 553(d)(3), as applicable, that it would be unnecessary and contrary to the public interest to delay the effective date of the specifications and management measures.

NEPA: *For the Annual Specifications and Management Measures*—An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 and Supplemental EISs were prepared for Amendments 4 (1990) and 6 (1992) in accordance with the National Environmental Policy Act (NEPA). The alternatives considered and the environmental impacts of the actions in this notice are not significantly different than those considered in either the EIS or SEISs for the FMP, and the actions fall within the scope of these analyses. An environmental assessment (EA) prepared by the Council for the 1999 annual specifications and management measures was the basis for this conclusion.

Dated: December 31, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–34851 Filed 12–31–98; 4:26 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981231333–8334–02; I.D. 122898E]

RIN 0648–AM12

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Tribal Allocation of Whiting for 1999

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule to allocate a portion of the 1999 Optimum Yield (OY) specification (formerly called ''harvest guideline'') for Pacific whiting to Washington coastal tribal fisheries. This rule is intended to accommodate the Washington coastal treaty tribes rights to Pacific whiting and to provide equitable allocation of the whiting resource and thereby promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Comments must be submitted in writing by February 8, 1999.

ADDRESSES: Send comments to Mr. William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Information relevant to this proposed rule, including an Initial Regulatory Flexibility Analysis (IRFA), is available for public review during business hours at the office of the Regional Administrator, or may be obtained from NMFS by writing to the Sustainable Fisheries Division, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule based on recommendations of the Makah and Quileute Indian Tribes and the Council, under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR 660.324. At its November 1998 meeting in Portland, OR, the Council recommended a range of alternative amounts of whiting from 25,000–35,000 mt to be set aside for the Washington coastal tribes. Those alternatives and the need to accommodate tribal treaty rights are discussed below.

Background

Whiting is the most abundant groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. In late 1994, the U.S. Government formally recognized that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). In 1996, whiting was allocated to the Makah treaty Indian tribe for the first time (61 FR 28786, June 6, 1996). Thereafter, any allocation among domestic sectors was to be based on the harvest guideline minus any tribal allocation. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The treaty tribal fisheries for whiting, as well as those for sablefish and black rockfish, are separate fisheries, not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as not to exceed their allocations. Tribal allocations of whiting have been included in final specifications and management measures published annually by NMFS, but for reasons explained below, the 1999 final specifications and allocations for whiting will not be recommended by the Council until its March 1999 meeting. After the Council recommends a final whiting acceptable biological catch (ABC) and an OY and a tribal whiting allocation, NMFS will publish approved final specifications and allocations for whiting in the **Federal Register**. Final specifications are published in the final rules section of the **Federal Register**, but are not codified. The 1999 groundfish fishery specifications and management measures for all other groundfish species managed under the FMP are published elsewhere in this issue and reference therein is made to this proposed rule.

Preliminary ABC/OY

A new stock assessment for whiting is expected in early 1999, so the Council has delayed its recommendation of a final whiting ABC and OY until March so that it will be able to consider the new stock assessment. The preliminary ABC and OY considered by the Council for whiting are a range, with the upper end at the 1998 ABC/HG (232,000 mt) and the lower end (178,000 mt) at 80 percent of the ABC projected for the U.S. and Canada combined. (Eighty percent is the proportion of the combined ABC in Canadian and U.S. waters that is caught in U.S. waters.) The final ABC and OY will be recommended at the Council's March 1999 meeting, at which time the tribal allocation will also be considered. The commercial OY (the OY minus the tribal allocation) will be allocated 42 percent to the shore-based sector, 24 percent to the mothership sector, and 34 percent to catcher/processors.

Projected 1998 Landings and Continuation of Regulations

Landings projections indicate that the 1998 whiting fisheries catches will be very close to the whiting OY of 232,000 mt: 87,548 mt by the shore-based fleet; 70,364 mt by the catcher/processing sector; 50,086 mt by the non-tribal mothership sector, and about 25,000 mt by the Makah tribal fishery. The 10,000-lb (4,536-kg) trip limit for whiting taken before and after the regular whiting season and inside the 100-fathom (183-m) contour in the Eureka subarea (40°30′-43°00′ N. lat.) continues in effect in 1999. Additional regulations, including the percentages used to allocate whiting among non-tribal sectors (42 percent to the shore-based sector, 24 percent to the mothership sector, and 34 percent to catcher/processors), are found at 50 CFR 660.323(a)(4).

Options for 1999 Allocation

In 1997 and in 1998, the tribal allocation for whiting was 25,000 mt and was announced in the annual specifications (62 FR 700, January 7, 1997, and 63 FR 419, January 6, 1998). For 1999, however, the tribal whiting allocation will not be determined until after the Council has made recommendations on the overall landed catch OY for whiting and on the tribal whiting allocation at its March 1999 meeting.

Two options for a 1999 tribal whiting allocation were proposed at the September 1998 Council meeting: (1) To set aside 25,000 mt of the U.S. OY for tribal whiting fisheries (which is the same amount that was set aside for the tribe in both 1997 and 1998); or (2) to adopt a tribal-Federal proposed allocation scheme that varies the amount of whiting set aside for the Makah Tribe according to the overall amount of the U.S. OY, and that sets aside 2,500 mt for the Quileute Tribe.

U.S. OY	Makah allocation	Quileute allocation (in mt)
Up to 145,000 mt	17.5% of the U.S. OY	2,500
145,001 to 175,000 mt	25,000 mt	2,500
175,001 to 200,000 mt	27,500 mt	2,500
200,001 to 225,000 mt	30,000 mt	2,500
225,001 to 250,000 mt	32,500 mt	2,500
Over 250,000 mt	35,000 mt	2,500

If the Quileute Tribe is unable to use its full allocation, the unused portion would be released to the Makah Tribe to harvest by the end of the year. This proposal is for 1999 only.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this proposed rule is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of E.O. 12866.

For the proposed tribal allocation of whiting, NMFS prepared an IRFA, under the Regulatory Flexibility Act, that describes the impact this proposed rule, if adopted, would have on small entities. The RFA identifies six items to be discussed in the IRFA. Those items are summarized here. (1) *A description of the reasons why action by the agency is being considered:* At the Council's September and November 1999 meetings, the Makah and Quileute treaty tribes submitted a proposal for determining annual tribal allocations of whiting. In late 1994, the U.S. government formally recognized that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas (described at 50 CFR 660.324). NMFS is obligated to accommodate the treaty rights of the treaty tribes off the Pacific coast of Washington State. The tribal proposal for allocation of whiting would be 30,000–35,000 mt in 1999. The Council proposed continuation of a 25,000-mt allocation, as occurred in 1997 and 1998. Therefore, the tribal allocation being considered for whiting in 1999 would be from 25,000–35,000 mt. (2) *A succinct statement of the objectives of, and legal basis for, the proposed rule:* The objective is to accommodate tribal treaty rights, as required by the Stevens treaties and as interpreted in the case of *U.S.* v. *Washington.* See IRFA for further citations. (3) *A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply:* The small entities directly affected by the proposed rule include catcher boats (tribal and nontribal) that harvest whiting and deliver to either shore-based processors or mothership processors at sea; and shore-based processors that process whiting. A total of 74 small entities could be directly affected by the allocation because the amount of whiting available to them would change. Less whiting would be available to nontribal small businesses that use whiting because it is allocated to the treaty tribes. Conversely, one to six tribal catcher boats, which also are small businesses, would be directly affected, but in a positive manner, by receiving the tribal allocation. All limited entry groundfish fishing vessels and processors could be indirectly affected, which is virtually all small businesses participating in the Pacific coast groundfish fishery. The major, negative indirect effect of the proposed allocation is that the entire groundfish limited entry fleet and nontribal processors may find their limits for non-whiting species lowered, or allocations reached earlier, if established whiting operations are displaced by tribal whiting operations, resulting in additional effort on other fully utilized fisheries. (4) *A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:* There are no projected reporting, recordkeeping, or compliance requirements in the proposed action. (5) *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.* NMFS believes there are no Federal rules which may duplicate, overlap, or conflict with the proposed action. (6) *Significant alternatives to the proposed rule:* Because the tribes have a treaty right to harvest whiting and have indicated that they plan to exercise the treaty right, there is no way to accomplish the objective of accommodating the treaty right without setting aside an appropriate amount of whiting for the tribes. The Council is considering the range of alternative amounts of whiting described above. The lower amount of whiting being considered would result in a lesser impact to the non-treaty fishery, but may not accommodate the full treaty right of the tribes. The larger amount would have a larger impact on the non-treaty fishery. The tribes and NMFS are proposing the amount believed to most appropriately accommodate the treaty right pending final resolution of the quantification of the right through litigation or negotiation. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

Dated: December 31, 1998.

Andrew A. Rosenberg,

Deputy Assist. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–264 Filed 1–7–99; 8:45 am]

BILLING CODE 3510–22–P

Friday
January 8, 1999

Part IV

Department of Health and Human Services

Office of the Secretary

48 CFR Chapter 3
Acquisition Regulation; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Chapter 3

Acquisition Regulation

AGENCY: Department of Health and Human Services (HHS).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Health and Human Services is republishing its acquisition regulation (HHSAR), Title 48 Code of Federal Regulations, Chapter 3, to streamline and simplify it in accordance with the tenets of the National Performance Review. In doing so, the Department believes it has eliminated some procedural guidance which is too encumbering for a simplified system while attempting to empower the appropriate levels of management and contracting personnel with the authorities required for them to successfully accomplish their mission with the least amount of resistance and oversight.

DATES: Comments must be received by March 9, 1999.

ADDRESSES: Comments should be sent to Mr. E. S. Lanham, Office of Acquisition Management, 200 Independence Avenue, Southwest—Room 517 D, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Office of Acquisition Management, telephone (202) 690–7590.

SUPPLEMENTARY INFORMATION: The Department emphasizes that it is not making significant amendments to the existing HHSAR. The amendments being made to the HHSAR concern internal procedural matters which are administrative in nature, and will not have a major effect on the general public, or to contractors or offerors of the Department. The majority of the amendments eliminate procedural guidance no longer deemed necessary, or change contracting review and approval authorities to situate them at levels more appropriate to simplification, streamlining, and empowerment. The Department has also updated HHSAR to bring it in line with the latest amendments made to the Federal Acquisition Regulation (FAR).

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); therefore, no regulatory flexibility statement has been prepared. Since this rule conveys existing acquisition policies or procedures and does not promulgate any new policies or procedures which would impact the public, it has been determined that this rule will not have a significant economic effect on a substantial number of small entities, and, thus, a regulatory flexibility analysis was not performed.

Furthermore, this document does not contain new information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing approvals cited in 48 CFR section 301.106 remain in effect. The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486 (c).

List of Subjects in 48 CFR Chapter 3

Government procurement.

Under the authority of 5 U.S.C. 301; 40 U.S.C. 486(c), the Department of Health and Human Services revises 48 CFR Chapter 3 as set forth below.

Dated: November 24, 1998.

John J. Callahan,

Assistant Secretary for Management and Budget.

CHAPTER 3—HEALTH AND HUMAN SERVICES

Table of Contents

SUBCHAPTER A—GENERAL

PART 301—HHS ACQUISITION REGULATION SYSTEM

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 301.1—Purpose, Authority, Issuance

301.101 Purpose.

(a) The Department of Health and Human Services Acquisition Regulation (HHSAR) is issued to establish uniform acquisition policies and procedures for the Department of Health and Human Services (HHS) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The HHSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material is new material which has no counterpart in the FAR.)

(c) The HHSAR contains all formal departmental policies and procedures that govern the acquisition process or otherwise control contracting relationships between the Department's contracting offices and contractors.

301.103 Authority.

(b) The HHSAR is prescribed by the Assistant Secretary for Management and Budget under the authority of 5 U.S.C. 301 and Section 205 (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary.

(c) The HHSAR is issued in the Code of Federal Regulations (CFR) as Chapter 3 of Title 48, Department of Health and Human Services Acquisition Regulation. It may be referenced as ''48 CFR Chapter 3.''

301.106 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to the information collection and record keeping requirements contained in this regulation:

HHSAR segment	OMB control No.
315.4	0990–0139
324.70	0990–0136
342.7101	0990–0131
352.224–70	0990–0136
352.233–70	0990–0133
352.270–1	0990–0129
352.270–2	0990–0129
352.270–3	0990–0129
352.270–5	0990–0130
370.1	0990–0129
370.2	0990–0129

The OMB control number ''OMB No. 0990–0115'' is to be included in the upper right corner of the first page of all solicitations, purchase orders, and contracts issued by departmental contracting activities. The number represents approval of the HHS acquisition process and covers record keeping and reporting requirements which are unique to individual acquisitions (e.g., requirements contained in specifications, statements of work, etc.).

Subpart 301.2—Administration

301.270 Executive Committee for Acquisition.

(a) The Deputy Assistant Secretary for Grants and Acquisition Management has established the Executive Committee for Acquisition (ECA) to assist and facilitate the planning and development of departmental acquisition policies and procedures and to assist in responding to other agencies and organizations concerning policies and procedures impacting the Federal acquisition process.

(b) The ECA consists of members and alternates from the Office of Acquisition Management, Administration for Children and Families, Health Care Financing Administration, Program Support Center, Centers for Disease Control and Prevention, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, and Substance Abuse and Mental Health Services Administration. The ECA is chaired by the Director, Office of Acquisition Management. All meetings will be held at the call of the Chairman, and all activities will be carried out under to direction of the Chairman.

(c) The ECA, to facilitate the planning, development, and coordination of governmentwide and departmentwide acquisition policies and procedures, is to:

(1) Advise and assist the Chairman concerning major acquisition policy matters;

(2) Review and appraise, at appropriate intervals, the overall effectiveness of existing policies and procedures; and

(3) Review and appraise the impact of new major acquisition policies, procedures, regulations, and development on current acquisition policies and procedures.

(d) The Chairman will periodically issue a list of current members and alternates specifying the name, title, organization, address, and telephone number of each. The member organizations are responsible for apprising the Chairman whenever a new member or alternate is to be appointed to the ECA.

Subpart 301.4—Deviations from the FAR

301.403 Individual deviations.

Requests for individual deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Director, Office of Acquisition Management for review and approval.

301.404 Class deviations.

Requests for class deviations to either the FAR or HHSAR shall be prepared in accordance with 301.470 and forwarded through administrative channels to the Deputy Assistant Secretary for Grants and Acquisition Management for review and approval.

301.470 Procedure.

(a) When a contracting office determines that a deviation is needed, it shall prepare a deviation request in memorandum form and forward it through administrative channels to the official designated in 301.403 or 301.404. In an exigency situation, the contracting office may request a deviation verbally, through normal acquisition channels, but is required to confirm the request in writing as soon as possible.

(b) A deviation request shall clearly and precisely set forth the:

(1) Nature of the needed deviation;

(2) Identification of the FAR or HHSAR citation from which the deviation is needed;

(3) Circumstances under which the deviation would be used;

(4) Intended effect of the deviation;

(5) Time-frame; and

(6) Reasons which will contribute to complete understanding and support of the requested deviation. A copy of pertinent background papers such as a form or contractor's request should accompany the deviation request.

Subpart 301.6—Career Development, Contracting Authority, and Responsibilities

301.602 Contracting officers.

301.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. However, execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may be later ratified. The ratification must be in the form of a written document clearly stating that ratification of a previously unauthorized act is intended and must be signed by the head of the contracting activity (HCA).

(2) The HCA is the official authorized to ratify an unauthorized commitment (but see (b)(3) of this section).

(3) Ratification authority for actions up to $25,000 may be redelegated by the HCA to the chief of the contracting office (CCO). No other redelegations are authorized.

(c) *Limitations.* (5) The concurrence of legal counsel concerning the payment issue is optional.

(e) *Procedures.* (1) The individual who made the unauthorized contractual commitment shall furnish the reviewing contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to: a

statement as to why the contracting office was not used, a statement as to why the proposed contractor was selected, a list of other sources considered, a description of work to be performed or products to be furnished, the estimated or agreed contract price, a citation of the appropriation available, and a statement whether the contractor has commenced performance.

(2) The contracting officer will review the submitted material, and prepare the ratification document if he/she determines that the commitment may be ratifiable. The contracting officer shall forward the ratification document and the submitted material to the HCA or CCO with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the HCA or CCO will coordinate the request for ratification with the Office of General Counsel, Business and Administrative Law Division.

(3) If ratification is authorized by the HCA or CCO, the file will be returned, along with the ratification document, to the contracting officer for issuance of a purchase order or contract, as appropriate.

301.603 Selection, appointment, and termination of appointment.

301.603–1 General.

(a) The appointment and termination of appointment of contracting officers shall be made by the head of the contracting activity (HCA). This authority is not delegable.

(b) The contracting officer appointment document for personnel in the GS–1101, 1102, and 1105 series, as well as personnel in any other series who will obligate the Government to the expenditure of funds in excess of the micro-purchase threshold, shall be the Standard Form (SF)—1402, Certificate of Appointment. The HCA may determine an alternative appointment document for appointments below that threshold. Changes to appointments shall be made by issuing a new appointment document. Each appointment document shall be prepared and maintained in accordance with FAR 1.603–1 and shall state the limits of the individual's authority.

(c) An individual must be certified under the HHS Acquisition Certification Program as a prerequisite to being appointed as a contracting officer with authority to obligate funds in excess of the micro-purchase threshold (see 301.603–3(a)). The HCA will determine and require appropriate training for individuals appointed as contracting officers at lower dollar levels. An individual shall be appointed as a contracting officer only in instances where a valid organizational need can be demonstrated. Factors to be considered in assessing the need for an appointment of a contracting officer include volume of actions, complexity of work, and structure of the organization.

301.603–2 Selection.

Nominations for appointment of contracting officers shall be submitted to the HCA through appropriate organizational channels for review. The nomination package, which is usually initiated by the prospective contracting officer's immediate supervisor, shall normally include the nominee's current personal qualifications statement or job history, including the information required by FAR 1.603–2, a copy of his/her most recent performance appraisal, and a copy of the certificate issued under the HHS Acquisition Certification Program indicating the nominee's current certification level, if applicable. The HCA will determine the documentation required, consistent with FAR 1.603–2, when the resulting appointment and authority will not exceed the micro-purchase threshold.

301.603–3 Appointment.

(a) Contracting officer appointments shall be made at levels commensurate with nominees' certification levels as follows:

(1) Level I—Purchasing Agent—Required for all personnel in the GS–1102 and 1105 series having signature authority for simplified acquisitions, including orders from GSA sources over the micro-purchase threshold.

(2) Level II—Acquisition Official—Required for all personnel in the GS–1102 series. Sufficient for delegation of contracting officer authority up to $500,000.

(3) Level III—Senior Acquisition Official—Required for all personnel in the GS–1102 series for delegation of contracting officer authority above $500,000.

(4) Level IV—Acquisition Manager—Required for delegation of preaward review and approval authority as specified in Subpart 304.71.

(b) If it is essential to appoint an individual who does not fully meet the certification requirements of this section for the contracting officer authority sought, an interim appointment may be granted by the HCA. Interim appointments may not exceed one (1) year in total, and shall not be granted unless the individual can meet the certification requirements within one year from the date of appointment. If the certification requirements are not met by that date, the appointment will automatically terminate and cannot be renewed.

301.603–4 Termination.

Termination of contracting officer appointments shall be accomplished in accordance with FAR 1.603–4.

301.603–70 Delegation of contracting officer responsibilities.

(a) Contracting officer responsibilities which do not involve the obligation (or deobligation) of funds or result in establishing or modifying contractual provisions may be delegated by the contracting officer by means of a written memorandum which clearly delineates the delegation and its limits.

(b) Contracting officers may designate individuals as ordering officials to make purchases or place orders under blanket purchase agreements, indefinite delivery contracts, or other pre-established mechanisms. Ordering officials, including those under NIH's DELPRO, are not contracting officers.

(c) Project officers are required to complete the training specified in 307.170, while ordering officials and others should receive sufficient instruction from the contracting officer to ensure the appropriate exercise of the responsibilities and knowledge of their limitations.

PART 302—DEFINITIONS OF WORDS AND TERMS

Subpart 302.1—Definitions

Subpart 302.2—Definitions Clause

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 302.1—Definitions

302.101 Definitions.

Chief of the contracting office (CCO) is a mid-level management official in charge of a contracting office who controls and oversees the daily contracting operation of an Operating Division (OPDIV) or major component of an OPDIV. The CCO is subordinate to the head of the contracting activity, and is located at a management level above other contracting personnel, usually as a branch chief or division director.

Head of the agency or *agency head,* unless otherwise specified, means the head of the Operating Division (OPDIV) for ACF, HCFA, PSC, CDCP, FDA, HRSA, IHS, NIH, and SAMHSA, or the Assistant Secretary for Management and Budget (ASMB) for the Office of the Secretary (OS).

Head of the contracting activity (HCA) is defined in terms of certain organizational positions within the Office of Grants and Acquisition Management (OGAM), Administration for Children and Families (ACF), Health Care Financing Administration (HCFA), Program Support Center (PSC), Centers for Disease Control and Prevention (CDCP), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), and Substance Abuse and Metal Health Services Administration (SAMHSA), as follows:

OGAM–OS—Director, Office of Acquisition Management
ACF—Director, Division of Acquisition Management
HCFA—Director, Office of Acquisition and Grants
PSC—Director, Division of Acquisition Management
CDCP—Director, Procurement and Grants Office
FDA—Director, Office of Facilities, Acquisition, and Central Services
HRSA—Director, Division of Grants and Procurement Management
IHS—Director, Division of Contracts and Grants Policy
NIH—Director, Office of Contracts and Grants Management
SAMHSA—Director, Division of Contracts Management

In addition, the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM) is designated as an HCA. Each HCA is responsible for conducting an effective and efficient acquisition program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted and evaluated by qualified personnel, preferably assigned to positions other than in the contracting office being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training. The HCA shall be certified, or be certifiable, at Level IV of the HHS Acquisition Certification Program. Individuals appointed as HCA's who do not meet the Level IV requirements shall have one year from the date of appointment to obtain Level IV certification. The heads of contracting activities may redelegate their HCA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Acquisition Regulation, by the HHS Acquisition Regulation, or by other regulations. However, HCA and other contracting approvals and authorities shall not be redelegated below the levels specified in the HHS Acquisition Regulation or, in the absence of coverage in the HHS Acquisition Regulation, the Federal Acquisition Regulation. To ensure proper control of redelegated acquisition authorities, HCA's shall maintain a file containing successive delegations of HCA authority through and including the contracting officer level. Personnel delegated responsibility for acquisition functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the acquisition actions involved.

Subpart 302.2—Definitions Clause

302.201 Contract clause.

The FAR clause, Definitions, at 52.202–1 shall be used as prescribed in FAR 2.201, except as follows:

(a) Paragraph (a) at 352.202–1 shall be used in place of paragraph (a) of the FAR clause.

(b) Paragraph (h), or its alternate, at 352.202–1 shall be added to the end of the FAR clause. Use paragraph (h) when a fixed-priced contract is anticipated; use the alternate to paragraph (h) when a cost-reimbursement contract is anticipated.

PART 303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 303.1—Safeguards

301.101 Standards of conduct.

303.101–3 Agency regulations.

The Department of Health and Human Services' Standards of Conduct are prescribed in Part 73 of Title 45.

Subpart 303.2—Contractor Gratuities to Government Personnel

303.203 Reporting suspected violations of the Gratuities clause.

Departmental personnel shall report suspected violations of the Gratuities clause in accordance with Subpart M, Reporting Violations, of 45 CFR Part 73. Refer to Subpart B, Gifts from Outside Sources, (5 CFR 2635.201) for an explanation regarding what is prohibited and what is permitted.

Subpart 303.3—Reports of Suspected Antitrust Violations

303.303 Reporting suspected antitrust violations.

A copy of each report of suspected antitrust violations submitted to the Attorney General by the HCA shall also be submitted to the Director, Office of Acquisition Management.

Subpart 303.4—Contingent Fees

303.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(c) Reports shall be made promptly to the contracting officer.

(d)(4) Suspected fraudulent or criminal matters to be reported to the Department of Justice shall be prepared in letter format and forwarded through acquisition channels to the head of the contracting activity for signature. The letter must contain all pertinent facts and background information considered by the contracting officer and chief of the contracting office that led to the decision that fraudulent or criminal matters may be present. A copy of the signed letter shall be sent to the Director, Office of Acquisition Management.

Subpart 303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

303.602 Exceptions.

Approval of an exception to the policy stated in FAR 3.601 shall be made by the HCA (not delegable).

Subpart 303.7—Voiding and Rescinding Contracts

303.704 Policy.

For purposes of implementing FAR Subpart 3.7, the authorities granted to

the ''agency head or designee'' shall be exercised by the HCA (not delegable).

PART 304—ADMINISTRATIVE MATTERS

Subpart 304.6—Contract Reporting

Subpart 304.8—Government Contract Files

Subpart 304.70—Acquisition Instrument Identification Numbering System

Subpart 304.71—Review and Approval of Proposed Contract Awards

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 304.6—Contracting Reporting

304.602 Federal Procurement Data System (FPDS).

The Departmental Contracts Information System (DCIS) represents the Department's implementation of the FPDS. All departmental contracting activities are required to participate in the DCIS and follow the procedures stated in the Enhanced Departmental Contracts Information System Manual and amendments to it. The HCA (not delegable) shall ensure that all required contract information is collected, submitted, and received into the DCIS on or before the 15th of each month for all appropriate contract and contract modifications award of the prior month.

Subpart 304.8—Government Contract Files

304.804–70 Contract closeout audits.

(a) Contracting officers shall rely, to the maximum extent possible, on non-Federal single audits to close physically completed cost-reimbursement contracts with colleges and universities, hospitals, non-profit firms, and State and local governments. In addition, where appropriate, a sample of these contractors may be selected for audit, in accordance with the decision-making process set forth in the following paragraph (b).

(b) Contracting officers shall request contract closeout audits on physically completed, cost-reimbursement, for-profit contracts as follows:

(1) Decisions on: the need for and allocation of contract audit resources and services; the selection of contracts or contractors to be audited; the identification of the audit agency to perform the audit; and the type or scope of closeout audit to be conducted, shall be made by the Office of Inspector General (OIG) and Office of Grants and Acquisition Management, in consultation with the Department's Contract Audit Users Work Group. These decisions shall be based upon the needs of the customer, risk analysis, return on investment, and the availability of audit resources. When an audit is warranted prior to closing a contract, the contracting officer shall submit the audit request to the OIG's Office of Audit via the appropriate OPDIV representative on the Contract Audit Users Work Group.

(2) Except where a contracting officer suspects misrepresentation or fraud, contract closeout field audits shall not be requested if the cost of performance is likely to exceed the potential cost recovery. Contracts that are not selected for a field audit may be closed on the basis of a desk review, subject to any later on-site audit findings. The release executed by the contractor shall contain the following statement:

> The Contractor agrees, pursuant to the clause in this contract entitled ''Allowable Cost'' or ''Allowable Cost and Fixed Fee'' (as appropriate), that the amount of any sustained audit exceptions resulting from any audit made after final payment shall be refunded to the Government.''

Subpart 304.70—Acquisition Instrument Identification Numbering System

304.7000 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders, and delivery orders. The HCA (not delegable) is responsible for establishing the numbering system within the OPDIV.

304.7001 Numbering acquisitions.

(a) *Acquisitions which require numbering.* The following acquisitions shall be numbered in accordance with the system prescribed in paragraph (b) of this section:

(1) Contracts, including letter contracts and task orders under basis ordering agreements, which involve the payment of $2,500 or more for the acquisition of personal property or nonpersonal services. (The number assigned to a letter contract shall be assigned to the superseding definitized contract).

(2) Contracts which involve the payment of $2,000 or more for construction (including renovation or alteration).

(3) Contracts which involve more than one payment regardless of amount.

(4) Requests for proposals and invitations for bids.

(5) Purchase and delivery orders.

(6) Requests for quotations.

(7) Basic ordering agreements.

(b) *Numbering system for contracts.* All contracts which require numbering shall be assigned a number consisting of the following:

(1) The three digit identification code assigned to the contracting office by the Office of Financial Operations, Program Support Center.

(2) A two digit fiscal year designation; and

(3) A four digit serial number. For example, the initial contract executed by the Office of Acquisition Management, OS, for fiscal year 1996 would be numbered 100–96–0001. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Numbering system for other acquisitions.* The HCA is responsible for developing a numbering system for the acquisitions other than contracts listed in HHSAR 304.7001 (a)(4) through (a)(7), and any other types of acquisitions that may be used.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the Office of Financial Operations. Requests for the assignment of codes for newly established contracting offices shall be submitted by the headquarters acquisition staff office of the contracting activity to the Office of Financial Operations must be notified. A listing of the contracting office identification codes currently in use is contained in the Enhanced Departmental Contracts Information System Manual.

Subpart 304.71—Review and Approval of Proposed Contract Awards

304.7100 Policy.

This subpart requires each HCA (not delegable) to establish review and approval procedures for proposed contracts actions to ensure that:

(a) Contract awards are in conformance with law, established policies and procedures, and sound business practices;

(b) Contractual documents properly reflect the mutual understanding of the parties; and

(c) The contracting officer is informed of deficiencies and items of questionable acceptability, and corrective action is taken.

304.7101 Procedures.

(a) All contractual documents, regardless of dollar value, are to be

reviewed by the contracting officer prior to award.

(b) The HCA is responsible for establishing review and approval procedures and designating acquisition officials to serve as reviewers. Each HCA is responsible for determining the criterion (criteria) to be used in determining which contracts are to be reviewed, and that a sampling of proposed contracts not included in the ''to be reviewed'' group are reviewed and approved.

(c) Officials assigned responsibility for review and approval of contract actions must possess qualifications in the field of acquisition commensurate with the level of review performed, and, at a minimum, possess those acquisition skills expected of a contracting officer. However, if any official is to serve as the contracting officer and sign the contractual document, the review and approval function shall be performed by an appropriate official at least one level above.

PART 305—PUBLICIZING CONTRACT ACTIONS

Subpart 305.2—Synopsis of Proposed Contract Actions

Sec.
305.202 Exceptions.

Subpart 305.3—Synopsis of Contract Awards

305.303 Announcement of contract awards.

Subpart 305.5—Paid Advertisements

305.502 Authority.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 305.2—Synopsis of Proposed Contract Actions

305.202 Exceptions.

(b) When a contracting office believes that it has a situation where advance notice is not appropriate or reasonable, it shall prepare a memorandum citing all pertinent facts and details and send it, through normal acquisition channels, to the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM) requesting relief from synopsizing. The DASGAM shall review the request and decide whether an exception to synopsizing is appropriate or reasonable. If it is, the DASGAM shall take the necessary coordinating actions required by FAR 5.202(b). Whatever the decision is on the request, the DASGAM shall promptly notify the contracting office when a determination has been made.

Subpart 305.3—Synopses of Contract Awards

305.303 Announcement of contract awards.

(a) *Public announcement.* Any contract, contract modification, or delivery order in the amount of $3 million or more shall be reported by the contracting officer to the Office of the Deputy Assistant Secretary for Legislation (Congressional Liaison), Room 406G, Hubert H. Humphrey Building. Notification shall be accomplished by providing a copy of the contract or award document face page to the referenced office prior to the day of award, or in sufficient time to allow for an announcement to be made by 5:00 p.m. Washington, DC time on the day of award.

Subpart 305.5—Paid Advertisements

305.502 Authority.

The contracting officer is authorized to publish advertisements, notices, and contract proposals in newspapers and periodicals in accordance with the requirements and conditions referenced in FAR Subpart 5.5.

PART 306—COMPETITION REQUIREMENTS

Subpart 306.2—Full and Open Competition After Exclusion of Sources

Sec.
306.202 Establishing or maintaining alternative sources.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.
306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
306.302–7 Public interest.
306.303 Justification.
306.303–1 Requirements
306.303–2 Content.
306.304 Approval of the justification.

Subpart 306.5—Competition Advocates

306.501 Requirement.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 306.2—Full and Open Competition After Exclusion of Sources

306.202 Establishing or maintaining alternative sources.

(a) The reference to the agency head in FAR 6.202(a) shall mean the appropriate competition advocate cited in 306.501.

(b)(1) The required determination and findings (D&F) shall be prepared by the contracting officer based on the data provided by program personnel, and shall be signed by the appropriate competition advocate. The D&F signatory is not delegable.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(ii) Follow-on contracts for the continuation of major research and development studies on long-term social and health programs, major research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling the Department's or OPDIV's requirements.

(b) *Application.* (4) When the head of the program office has determined that a specific item of technical equipment or parts must be obtained to meet the activity's program responsibility to test and evacuate certain kinds and types of products, and only one source is available. (This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive acquisitions. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item of equipment required.)

306.302–7 Public interest.

(a) *Authority.* (2) Agency head, in this instance, means the Secretary.

(b) *Limitations.* An ''approval package'' must be prepared by the contracting officer and staffed through departmental acquisition channels to the Secretary. The package shall include a determination and findings for the Secretary to sign that contains all pertinent information to support justification for exercising the exemption to competition, and a letter for the Secretary to sign notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7).

306.303 Justifications.

306.303–1 Requirements.

(b) Preliminary arrangements or agreements with the proposed contractor shall have no effect on the rationale used to support an acquisition for other than full and open competition.

(f) When a program office desires to obtain certain goods or services by contract without full and open competition, it shall, at the time of

forwarding the requisition or request for contract, furnish the contracting office a justification explaining why full and open competition is not feasible. All justifications shall be initially reviewed by the contracting officer.

(1) Justifications in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and called a ''JOFOC'' (Justification for Other Than Full and Open Competition). Justifications at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(2) Justifications, whether over or under the simplified acquisition threshold, shall fully describe what is to be acquired, offer reasons which go beyond inconvenience, and explain why it is not feasible to obtain competition. The justifications shall be supported by verifiable facts rather than mere opinions. Documentation in the justification should be sufficient to permit an individual with technical competence in the area to follow the rationale.

306.303–2 Content.

(a)(1) The program office and name, address, and telephone number of the project officer shall also be included.

(2) This item shall include project identification such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(3) The description may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) Each JOFOC shall conclude with at least signature lines for the project officer, project officer's immediate supervisor, contracting officer, and approving official.

306.304 Approval of the Justification.

(a)(2) The competition advocates are listed in 306.501. This authority is not delegable.

(3) The competition advocate shall exercise this approval authority, except where the individual designated as the competition advocate does not meet the requirements of FAR 6.304(a)(3)(ii). This authority is not delegable.

(4) The senior procurement executive of the Department is the Assistant Secretary for Management and Budget.

(c) A class justification shall be processed the same as an individual justification.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The Department's competition advocate is the Deputy Assistant Secretary for Grants and Acquisition Management. The competition advocates for the Department's primary contracting officers are as follows:

ACF—Director, Office of Management Services
HCFA—Associate Administrator for Operations and Resource Management
OS—Deputy Assistant Secretary for Grants and Acquisition Management
PSC—Director, Administrative Services Center
AHCPR—Executive Officer
CDCP—Director, Office of Program Support
FDA—Associate Commissioner for Management
HRSA—Associate Administrator for Operations and Management
IHS—Associate Director, Office of Administration and Management
NIH—(R&D)—Associate Director for Extramural Affairs (Other than R&D)—Associate Director for Intramural Affairs
SAMHSA—Associate Administrator for Management

PART 307—ACQUISITION PLANNING

Subpart 307.1—Acquisition Plans

Sec.
307.104 General procedures.
307.105 Contents of written acquisition plans.
307.170 Program training requirements.
307.170–1 Policy exceptions.
307.170–2 Training course prerequisites.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.
307.303 Determining availability of private commercial sources.
307.304 Procedures.
307.307 Appeals.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.
307.7001 Distinction between acquisition and assistance.
307.7002 Procedures.

Subpart 307.71—Requests for Contract

307.7100 Scope of subpart.
307.7101 General.
307.7102 Procedures.
307.7103 Responsibilities.
307.7104 Transmittal.
307.7105 Format and content.
307.7106 Statement of work.
307.7107 Review.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 307.1—Acquisition Planning

307.104 General procedures.

(c) If use of other than full and open competition is anticipated, see 307.104(h).

(d) Each contracting activity shall prepare an Annual Acquisition Plan (AAP). The AAP is a macro plan, containing a list of anticipated contract actions over the simplified acquisition threshold and their associated funding, as well as the aggregate planned dollars for simplified acquisitions by quarter, developed for each fiscal year. The AAP shall conform to reasonable budget expectations and shall be reviewed at least quarterly and modified as appropriate. The chief of the contracting office (CCO) shall obtain this information from the program planning/budget office of the contracting activity and use the AAP to provide necessary reports and monitor the workload of the contracting office. For contract actions, the plan shall contain, at a minimum:

(1) A brief description (descriptive title, perhaps one or two sentences if necessary);

(2) Estimated award amount;

(3) Requested award date;

(4) Name and phone number of contact person (usually the project officer);

(5) Other information required for OPDIV needs.

(e) Once the AAP is obtained, the contracting officer/contract specialist shall initiate discussions with the assigned project officer for each planned negotiated acquisition over $100,000 except for:

(1) Acquisitions made under interagency agreements, and

(2) Contract modifications which exercise options, make changes authorized by the Changes clause, or add funds to an incrementally funded contract. (The HCA may prescribe procedures for contract actions not covered by this subpart.)

(f) The purpose of the discussions between the contracting and project officers is to develop an individual acquisition planning schedule and to address the things that will need to be covered in the request for contract (RFC), including clearances, acquisition strategy, sources, etc. The project officer must either have a statement of work (SOW) ready at this time or must discuss in more detail the nature of the services/supplies that will be required.

(g) Standard lead-times for processing various types of acquisitions and deadlines for submission of acceptable RFCs (that is, RFCs which include all

required elements such as clearances, funding documents, and an acceptable SOW) for award in a given fiscal year shall be established by the HCA or designee not lower that the CCO.

(h) The outcome of the discussions referenced in 307.104 (f) between the project officer and the contracting officer/contracting specialist will be an agreement concerning the dates of significant transaction-specific acquisition milestones, including the date of submission of the RFC to the contracting officer. This milestone schedule document will be prepared with those dates and will be signed by the project officer and the contracting officer. The milestones cannot be revised except by mutual agreement of these same individuals. If the planning schedule indicates the need to obtain approval of a Justification for Other than Full and Open Competition, the CCO must sign the milestone agreement. This document shall be retained in the contract file. All other considerations that will affect the acquisition (technical, business, management) shall be addressed in the RFC (see 307.71).

(A) RFCs submitted after the established deadline in paragraph (g) of this section or the agreed-upon milestone for RFC submission in paragraph (h) of this section will be accepted for processing on a case-by-case basis.

307.105 Contents of written acquisition plans.

The written acquisition plan required by FAR 7.105 is contained in the request for contract, as specified in Subpart 307.71, and is the final product of the planning process.

307.170 Program training requirements.

(a) All program personnel selected to serve as project officer for an HHS contract shall have successfully completed either the Department's appropriate ''Basic Project Officer'' course, or an equivalent course (see paragraph (c) of this section).

(b) At least fifty percent of the HHS program personnel performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited HHS contract shall have successfully completed the appropriate ''Basic Project Officer'' course, or an equivalent course (see paragraph (c) of this section). This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may be required.

(c) Determination of course equivalency shall be made by the HCA (not delegable) of the cognizant contracting activity. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training discussed in 307.170–2.

307.170–1 Policy exceptions.

In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the prerequisite training course, the HCA (not delegable) may waive the training requirement and authorize the individual to perform the project duties, provided that:

(a) The individual first meets with the cognizant contracting officer to review the ''DHHS Project Officers' Contracting Handbook,'' and to discuss the important aspects of the contracting—program office relationship as appropriate to the circumstances; and

(b) The individual attends the next scheduled and appropriate ''Basic Project Officer'' course.

307.170–2 Training course prerequisites.

(a) *Project officers.* (1) Newly appointed project officers, and project officers with less than three years experience and no previous related training, are required to take the appropriate ''Basic Project Officer'' course. (The grade level for project officers attending the course should be GS–7 and above.) All project officers are encouraged to take the appropriate ''Writing Statements of Work'' course.

(2) Project officers with more than three years experience, and project officers with less than three years experience who have successfully completed the appropriate basic course, are qualified (and encouraged) to take the ''Advanced Project Officer'' course.

(3) Additional information on prerequisites for attendance of these courses may be found in the ''DHHS Acquisition Training and Certification Handbook.''

(b) *Technical proposal evaluators.* Technical proposal evaluators, regardless of experience, are required to take the appropriate ''Basic Project Officer'' course. Upon successful completion of the basic course, it is recommended that they take the appropriate ''Advanced Project Officer'' course.

Subpart 307.3—Contractor Versus Government Performance

307.302 General.

(a) GAM Chapter 18–10, Commercial-Industrial Activities of the Department of Health and Human Services Providing Products or Services for Government Use, assigns responsibilities for making method-of-performance decisions (contract vs. in-house performance) to various management levels within the Department depending on the dollar amount of capital investment or annual operating costs. It also requires that each operating division (OPDIV) and staff division (STAFFDIV) designate a ''Commercial-Industrial Control Officer'' (CICO) to be responsible for ensuring compliance with the requirements of the Chapter.

(d) Besides contracts with annual operating costs under $100,000, contracts with annual operating costs under an authorized acquisition set-aside for small business concerns and contracts made pursuant to section 8(a) of the Small Business Act are exempted from the requirements of FAR Subpart 7.3, GAM Chapter 18–10, and OMB Circular No. A–76.

307.303 Determining availability of private commercial sources.

In accordance with the provisions of GAM Chapter 18–10, OPDIVs and STAFFDIVs must prepare and maintain a complete inventory of all individual commercial or industrial activities, including those conducted under contracts in excess of $100,000 annually. They must also conduct periodic reviews of each activity and contract in the inventory to determine if the existing performance, in-house or by contract, continues to be in accordance with the policy guidelines of GAM Chapter 18–10.

307.304 Procedures.

Contracting officers shall ensure that no acquisition action involving a commercial-industrial activity is initiated unless it is in compliance with the requirements of GAM Chapter 18–10. The contracting officer must check each request for contract expected to result in a contract in excess of $100,000 to ensure that it contains a statement as to whether the proposed contract is or is not subject to review under GAM Chapter 18–10 requirements. If the contracting officer has any questions regarding the determination of applicability or nonapplicability, or if the required statement is missing, the program office submitting the request for contract should be contacted and the situation rectified. If the issue cannot be resolved with the program office, the contracting office shall refer the matter to the CICO for a final determination. The HCA is responsible for ensuring that contracting activities are in full compliance with FAR Subpart 7.3.

307.307 Appeals.

The review and appeals procedure discussed in FAR 7.307 are addressed in GAM Chapter 18–10.

Subpart 307.70—Considerations in Selecting an Award Instrument

307.7000 Scope of subpart.

This subpart provides guidance on the appropriate selection of award instruments consistent with the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501). This subpart explains the use of the contract as the award instrument for acquisition relationships, and the grant or cooperative agreement as the instrument for assistance relationships. This subpart provides guidance for determining whether to use the acquisition or assistance process to fulfill program needs. Detailed guidance on assistance instruments may be found in Chapter 1–02 of the Grants Administration Manual.

307.7001 Distinction between acquisition and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; *or*

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the acquisition process. However, this authority does not permit circumventing the criteria for use of acquisition or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM).

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards.)

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

307.7002 Procedures.

(a) OPDIV program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the HCA and the principal grants management official, or their designees, to distinguish the relationships and determine whether award is to be made through the acquisition process or assistance process. This determination should be made prior to the time when the annual acquisition plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocally justifies the rationale for the shift.

(c) OPDIVs must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable departmental policies. If, however, there are major individual transactions or programs which contain elements of both acquisition and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the DASGAM, through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of acquisition or assistance and specify the award instrument to be used.

Subpart 307.71—Requests for Contract

307.7100 Scope of subpart.

This subpart prescribes the format and contents of the request for contract (RFC) and provides procedures for its preparation and submission.

307.7101 General.

The program office's preparation of the RFC and submission to the contracting office completes the presolicitation phase of the acquisition planning process and commences the solicitation phase. The RFC is the formal document which initiates the preparation of the request for proposals (RFP) by the contracting office and sets the acquisition process in motion. It is the result of the planning by the project officer and contracting officer and contains much of the pertinent information necessary for the development of a sound, comprehensive RFP.

307.7102 Procedures.

The program office should submit the RFC to the contracting office no later than the date agreed to by the contracting officer and the project officer in the milestone schedule (see

307.104(h)), unless a revised due date has been established by mutual agreement.

307.7103 Responsibilities.

(a) It is the responsibility of the project officer to prepare the RFC so that it complies with the requirements of this subpart and any OPDIV guidance issued in accordance with this subpart.

(b) Prior to the submission of the RFC to the contracting office, the head of the program office sponsoring the project shall review the RFC to ensure that all required information is provided in the prescribed format, and a technical review of the statement of work has been made. The level and extent of the technical review is to be commensurate with the estimated cost, importance, and complexity of the proposed acquisition, and must be thorough enough to ensure that vague and ambiguous language is eliminated, the statement of work is structured by phases or tasks, if appropriate, and methods are available for assessing the contractor's technical, cost, and delivery performance.

307.7104 Transmittal.

The RFC must be conveyed to the contracting office by use of a covering memorandum or other form of transmittal. The transmittal document must be signed by the head of the sponsoring program office and include both a statement attesting to the conclusiveness of the review described in 307.7103(b) and a list identifying all attachments to the RFC.

307.7105 Format and content.

The Department does not prescribe a standard format for the RFC. A format similar to what is in this section is recommended. However, any document or group of documents will be acceptable as an RFC as long as all of the required information (paragraph (a) of this section), and as much of the optional information (paragraph (b) of this section) as is relevant, is included.

(a) The RFC must include:

(1) *Purpose of the contract.* A brief, general description of the requirement, including the citation of the legislation which authorizes the program or project, and a statement as to the intended purpose/use of the proposed contract.

(2) *Period of performance.* The number of months (or other time period) required for total performance and, if applicable, for each phase of work indicated in the statement of work, as well as the proposed starting date.

(3) *Estimated cost and funds citation.* An estimate of the total cost of the proposed contract and, if applicable, the estimate for each phase indicated in the statement of work. The project officer must provide a cost breakdown of all contributing cost factors, an estimate of the technical staff hours, direct material, subcontracting, travel, etc., and may consult with contracting and cost advisory personnel in developing this information. This section must include the certification of funds availability for the proposed acquisition, along with the appropriation and accounting information citations. When funds for the proposed acquisition are not currently available for obligation but are anticipated, a statement of intent to commit funds from the financial management officer shall be included in lieu of the certification of funds availability. (Contracts cannot be awarded unless funds are available, but see FAR 32.703–2).

(4) *Specification, purchase description, or statement or work.* A description of the work to be performed that may be in the form of a specification, purchase description, or statement of work. Guidance concerning the statement of work and its contents is contained in 307.7106. Specifications and purchase descriptions are not used to a great extent in this Department. Use of the specification is primarily limited to supply or service contracts where the material end item or service to be delivered is well defined by the Government.

(5) *Schedule of deliverables/reporting requirements.* A description of what is to be delivered, including, if applicable, technical and financial progress reports and any final report, and the required date of delivery for each deliverable. Reporting requirements should be tailored to the instant acquisition and should not be unnecessarily extensive or detailed. All delivery and reporting requirements shall include the quantities, the place of delivery, and time of delivery.

(6) *Sources for solicitation.* A list of known potential sources by name and mailing address. The project officer is encouraged to use trade and professional journals and publications to identify new prospective sources to supplement the list of known sources. Efforts to identify set-aside possibilities, i.e., small disadvantaged, and women-owned small businesses must be explained.

(7) *Project officer and alternate.* The project officer's name, title, organization, mailing address, and telephone number, along with the same data for the project officer's alternate, and a statement that these individuals have completed the Department's project officer training course (see 307.170)

(b) The RFC must include, if applicable to the acquisition:

(1) *Background and need.* The background, history, and necessity for the proposed contract. This section is to include prior, present, and planned efforts by the program office in the same or related areas, and a description of efforts by other departmental activities and Federal agencies in the same or related program areas, if known. In addition, specific project information, such as the relevance or contribution to overall program objectives, reasons for the need, priority, and project overlap are to be provided.

(2) *Reference materials.* A list, by title and description, of study reports, plans, drawings, and other data to be made available to prospective offerors for use in preparation of proposals and/or the contractor for use in performance of the contract. The project officer must indicate whether this material is currently available or when it will be available.

(3) *Technical evaluation criteria and instructions.* Technical evaluation criteria, which have been developed based on the requirements of the specific project, and any instructions and information which will assist in the preparation of prospective offerors' technical proposals. Evaluation factors may include understanding of the problem, technical approach, experience, personnel, facilities, etc. Criteria areas discussed in the statement of work and the relative order of importance or weights assigned to each of these areas for technical evaluation purposes must be identified.

(4) *Special program clearances or approvals.* Any required clearance or approval. The following special program clearances or approvals should be reviewed for applicability to each acquisition. The ones which are applicable should be addressed during the planning discussions between the project officer and contracting officer/ contract specialist (see 307.104(f)) and immediate action should be initiated by the project officer to obtain the necessary clearances or approvals. Comprehensive checklists of these and any OPDIV special approvals, clearances, and requirements shall be provided for reference purposes to program offices by the servicing contracting activity. If the approval or clearance has been requested and is being processed at the time of RFC submission, a footnote to this effect, including all pertinent details, must be included in this section.

(i) *Commercial activities.* (OMB Circular No. A–76). A request for contract (RFC) must contain a statement as to whether the proposed solicitation is or is not to be used as part of an OMB Circular No. A–76 cost comparison. (See General Administrative Manual (GAM) Chapter 18–10; FAR Subpart 7.3, Subpart 307.3; OMB Circular No. A–76.)

(ii) *Printing.* The acquisition of printing and high volume duplicating by contract is prohibited unless it is authorized by the Joint Committee on Printing of the U.S. Congress. Procedures to be followed are contained in the ''Government Printing and Binding Regulations'' and the HHS Printing Management Manual and FAR Subpart 8.8.

(iii) *Paperwork Reduction Act.* Under the Paperwork Reduction Act of 1995, a Federal agency shall not collect information or sponsor the collection of information from ten or more persons (other than Federal employees acting within the scope of their employment) unless, in advance, the agency has submitted a request for Office of Management and Budget (OMB) review, to the OMB, and the OMB has approved the proposed collection of information. Procedures for the approval may be obtained by contacting the OPDIV reports clearance officer. (See Title 5 CFR Part 1320).

(iv) *Publications.* All projects that will result in contracts which include more than one publication require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS–524, Request for Communications Contract Clearance, should be forwarded to OASPA through the OPDIV public affairs officer. Publications are defined in Chapter 5–00–15 of the Public Affairs Management Manual.

(v) *Public affairs services.* Projects for the acquisition of public affairs services in excess of $5,000 require review and approval by the Office of the Assistant Secretary for Public Affairs (OASPA). Form HHS–524, Request for Communications Contract Clearance, should be forwarded to OASPA through the OPDIV public affairs officer. Public affairs services are defined in Chapter 8–00–20 of the Public Affairs Management Manual.

(vi) *Audiovisual.* Any proposed acquisition of an audiovisual production requires the submission of a Standard Form 282, Mandatory Title Check, to the National Audiovisual Center (NAC). When the results of this title check have been reviewed by the project office and if a determination is made that existing materials are not adequate to fulfill the requirements, a statement to that effect shall be prepared by the project office. Audiovisuals are defined in Chapter 6–00–15 of the Public Affairs Management Manual. For acquisitions in excess of $5,000, a copy of that statement and Form HHS–524A, Audiovisual Clearance Request, shall be submitted through the OPDIV public affairs officer to the Office of the Assistant Secretary for Public Affairs (OASPA) for review and approval. An approval copy of the Form HHS–524A will be returned to the OPDIV for transmission to the contract negotiator.

(vii) *Privacy Act (Pub. L. 93–579).* Whenever the Department contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the Department to accomplish a departmental function, the Privacy Act is applicable. The program official, after consultation with the activity's Privacy Act Coordinator and the Office of General Counsel, as necessary, shall include a statement in the request for contract as to the applicability of the Act. Whenever an acquisition is subject to the Act, the program official prepares a ''system notice'' and has it published in the **Federal Register**. (See HHS Privacy Act regulation, 45 CFR 5b; FAR Subpart 24.1 and Subpart 324.1.)

(viii) *Foreign research.* All foreign research contract projects to be conducted in a foreign country and financed by HHS funds (U.S. dollars) must have clearance by the Department of State with respect to consistency with foreign policy objectives. This clearance should be obtained prior to negotiation. Procedures for obtaining this clearance are set forth in the HHS General Administration Manual, Chapter 20–60.

(5) *Identification and disposition of data.* Identification of the data expected to be generated by the acquisition and an indication of whether the data are to be delivered to the Department or to be retained by the contractor. The project officer must also include information relative to the use, maintenance, disclosure, and disposition of data. The project officer must include a statement as to whether or not another acquisition, based upon the data generated by the proposed acquisition, is anticipated.

(6) *Government property.* If known, the type of Government property, individual items, and quantities of Government property to be furnished to, or allowed to be acquired by, the resultant contractor. The project officer must specify when the Government property is to be made available. Refer to HHS Publication (OS) 686, ''Contractor's Guide for Control of Government Property (1990).''

(7) *Special terms and conditions.* Any suggested special terms and conditions not already covered in the statement of work or the applicable contract general provisions.

(8) *Justification for other than full and open competition.* If the proposed acquisition is to be awarded using other than full and open competition, a justification prepared in accordance with FAR Subpart 6.3 and Subpart 306.3.

307.7106 Statement of work.

(a) *General.* A statement of work (SOW) differs from a specifications and purchase description primarily in that it describes work or services to be performed in reaching an end result rather than a detailed, well defined description or specification of the end product. The SOW may enumerate or describe the methods (statistical, clinical, laboratory, etc.) that will be used. However, it is preferable for the offeror to propose the method of performing the work. The SOW should specify the desired results, functions, or end items without telling the offeror what has to be done to accomplish those results unless the method of performance is critical or required for the successful performance of the contract. The SOW should be clear and concise and must completely define the responsibilities of the Government and the contractor. The SOW should be worded so as to make more than one interpretation virtually impossible because it has to be read and interpreted by persons of varied backgrounds, such as attorneys, contracting personnel, cost estimators, accountants, scientists, educators, functional specialists, etc. The SOW must clearly define the obligations of both the contractor and the Government so as to protect the interests of both. Ambiguous statements of work can create unsatisfactory performance, delays, and disputes, and can result in higher costs.

(b) *Term (level of effort) vs. completion work statement.* Careful distinctions must be drawn between term (level of effort) SOWs, which essentially require the furnishing of technical effort and a report thereof, and completion type work statements, which require development of tangible items designed to meet specific performance characteristics. (See FAR 16.306(d) for distinction).

(1) *Term (or level of effort).* A term or level of effort type SOW is appropriate to research where one seeks to discover the feasibility of later development, or to gather general information. A term or level of effort type SOW may only specify that some number of labor-hours

be expended on a particular course of research, or that a certain number of tests be run, without reference to any intended conclusion.

(2) *Completion.* A completion type SOW is appropriate to development work where the feasibility of producing an end item is already known. A completion type SOW may describe what is to be achieved through the contracted effort, such as development of new methods, new end items, or other tangible results.

(c) *Phasing.* Individual research, development, or demonstration projects frequently lie well beyond the present state of the art and entail procedures and techniques of great complexity and difficulty. Under these circumstances, a contractor, no matter how carefully selected, may be unable to deliver the desired result. Moreover, the job evaluating the contractor's progress is often difficult. Such a contract is frequently phased and often divided into stages of accomplishment, each of which must be completed and approved before the contractor may proceed to the next. Phasing makes it necessary to develop methods and controls, including reporting requirements for each phase of the contract and criteria for evaluation of the report submitted, that will provide, at the earliest possible time, appropriate data for making decisions relative to future phases. A phased contract may include stages of accomplishment such as research, development, and demonstration. Within each phase, there may be a number of tasks which should be included in the SOW. When phases of work can be identified, the SOW will provide for phasing and the request for proposals will require the submission of proposed costs by phases. The resultant contract will reflect costs by phases, require the contractor to identify incurred costs by phases, establish delivery schedules by phase, and require the written acceptance of each phase. The provisions of the Limitation of Cost clause shall apply to the estimated cost of each phase. Contractors shall not be allowed to incur costs for phases which are dependent upon successful completion of earlier phases until written acceptance of the prior work is obtained from the contracting officer.

(d) *Elements of the SOW.* The elements of the SOW will vary with the objective, complexity, size, and nature of the acquisition. In general, it should cover the following matters as appropriate.

(1) *A general description of the required objectives and desired results.* Initially, a broad, nontechnical statement of the nature of the work to be performed. This should summarize the actions to be performed by the contractor and the results that the Government expects.

(2) *Background information helpful to a clear understanding of the requirements and how they evolved.* Include a brief historical summary as appropriate and the relationship to overall program objectives.

(3) *A detailed description of the technical requirements.* A comprehensive description of the work to be performed to provide whatever details are necessary for prospective offerors to submit meaningful proposals.

(4) *Subordinate tasks or types of work.* A listing of the various tasks or types of work (it may be desirable in some cases to indicate that this is not all-inclusive). The degree of task breakout is directly dependent on the size and complexity of the work to be performed and the logical groupings. A single cohesive task should not be broken out merely to conform to a format. Indicate whether the tasks are sequential or concurrent for offeror planning purposes.

(5) *Reference material.* All reference material to be used in the conduct of the project that tells how the work is to be carried out must be identified. Applicability should be explained, and a statement made as to where the material can be obtained.

(6) *Level of effort.* When a level of effort is required, the number and type of personnel required should be stated. If known, the type and degree of expertise should be specified.

(7) *Special requirements.* (as applicable). An unusual or special contractual requirement, which would impact on contract performance, should be included as a separate section.

(8) *Deliverables reporting requirements.* All deliverables and/or reports must be clearly and completely described.

307.7101 Review.

Upon receipt of the RFC, the contracting officer shall review its contents to ensure that all pertinent information has been provided by the program office and that it includes an acceptable SOW. If pertinent information is missing or the SOW is inadequate, the contracting officer shall obtain or clarify the information as soon as possible so that the acquisition schedule can be met. If the program office delays furnishing the information or clarification, the contracting officer should notify the head of the sponsoring program office, in writing, of the possible slippage in the acquisition schedule and the need for an expeditious remedy. The contracting officer should also notify the chief of the contracting office. A program office's or project officer's continued failure to adhere to agreed on milestones should also be reported to the head of the contracting activity.

PART 309—CONTRACTOR QUALIFICATIONS

Subpart 309.4—Debarment, Suspension, and Ineligibility

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 309.4—Debarment, Suspension, and Ineligibility

309.403 Definitions.

Acquiring agency's head or designee, as used in the FAR, shall mean, unless otherwise stated in this subpart, the head of the contracting activity. Acting in the capacity of the acquiring agency's head, the head of the contracting activity may make the required justifications or determinations, and take the necessary actions, specified in FAR 9.405, 9.406 and 9.407 for his or her respective activity, but *only after* obtaining the approval of the debarring or suspending official, as the case may be.

Debarring official means the Assistant Secretary for Management and Budget, or his/her designee.

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Grants and Acquisition Management, or the Inspector General.

Suspending official means the Assistant Secretary for Management and Budget, or his/her designee.

309.304 List of parties excluded from Federal procurement and nonprocurement programs.

(c) The Office of Grants and Acquisition Management (OGAM) shall perform the actions required by FAR 9.404(c).

(4) OGAM shall maintain all documentation submitted by the

initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OGAM review.

309.405 Effect of listing.

(a) The head of the contracting activity (HCA) (not delegable) may, with the concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or

(iii) There are other compelling reasons which require business dealings with the listed contractor.

(2) If the HCA decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall inform the contracting officer in writing of the decision within the required time period.

309.406 Debarment.

309.406–3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470–2, if known, and forward it through appropriate channels with a written recommendation, to the debarring official. Contracting officers shall forward their reports in accordance with 309.470–1. The debarring official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official, and the contracting officer, if necessary. If the debarring official determines to commence debarment procedures, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.406–3(c). If the proposed action is not based on a conviction or judgement and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary action specified in FAR 406–3(b)(2). The debarring official shall also ensure that written findings of facts are prepared, and shall base the debarment decisions on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

309.407 Suspension.

309.407–3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for suspension becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470–2, if known, and forward it through appropriate channels, with a written recommendation, to the suspending official. Contracting officers shall forward their reports in accordance with 309.470–1. The suspending official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the contracting officer, if necessary. If the suspending official determines to impose suspension, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.407–3(c). If the action is not based on an indictment, and, subject to the provisions of FAR 9.407–3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407–3(b)(2).

309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.

309.470–1 Situations where reports are required.

A report incorporating the information required by 309.470–2 shall be forwarded, in duplicate, by the contracting officer through acquisition channels to OGAM when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 or FAR 9.407–2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this regulation, or any other comparable regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

309.470–2 Contents of reports.

Each report prepared under 309.470–1 shall be coordinated with the Office of the General Counsel and shall include the following information, where available:

(a) Name and address of contractor.

(b) Name of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of the contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, (31 U.S.C. 3727, 41 U.S.C. 15), and the amounts paid or due on the contracts.

(h) A complete summary of all available pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and statements regarding whether the contractor should be suspended or debarred, whether any limitations should be applied to the action, and the period of any proposed debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

PART 313—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 313.3—Simplified Acquisition Methods

Sec.
313.303 Blanket purchase agreements (BPAs).
313.303–5 Purchases under BPAs.
313.305 Imprest funds and third party drafts.
313.305–1 General.
313.306 SF 44, Purchase Order—Invoice—Voucher.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 313.3—Simplified Acquisition Methods.

313.303 Blanket Purchase Agreements (BPAs).

313.303–5 Purchase under BPAs.

(e)(5) Delivery documents, invoices, etc., signed by the Government employee receiving the item or service will be forwarded to the fiscal office or other paying office as designated by the OPDIV. Payment will be made on the basis of the signed document, invoice, etc. Contracting offices will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

313.305 Imprest funds and third party drafts.

313.305–1 General.

Requests to establish imprest funds shall be made to the responsible fiscal office. At larger activities where the cashier may not be conveniently located near the purchasing office, a Class C Cashier may be installed in the purchasing office. Documentation of cash purchases shall be in accordance with instructions contained in the HHS Voucher Audit Manual Part 1, Chapter 1–10.

313.306 SF 44, Purchase Order—Invoice—Voucher.

(d) Since the Standard Form (SF) 44 is an accountable form, a record shall be maintained of serial numbers of the form, to whom issued, and date issued. SF 44's shall be kept under adequate lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

PART 314—SEALED BIDDING

Subpart 314.2—Solicitation of Bids

Sec.
314.202 General rules for solicitation of bids.
314.202–7 Facsimile bids.
314.213 Annual submission of representations and certifications.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.
314.404–1 Cancellation of invitations after opening.
314.407 Mistakes in bids.
314.407–3 Other mistakes disclosed before award.
314.407–4 Mistakes after award.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 314.2—Solicitation of Bids

314.202 General rules for solicitation of bids.

314.202–7 Facsimile bids.

If the head of the contracting activity (HCA) (not delegable) has determined that the contracting activity will allow use of facsimile bids and proposals, the HCA shall prescribe internal procedures, in accordance with the FAR, to ensure uniform processing and control.

314.213 Annual submission of representations and certifications.

Each HCA (not delegable) shall determine whether the contracting activity will allow use of the annual submission of representations and certifications by bidders.

Subpart 314.4—Opening of Bids and Award of Contract

314.404 Rejection of bids.

314.404–1 Cancellation of invitations after opening.

(c) The chief of the contracting office (CCO) (not delegable) shall make the determination required by FAR 14.404–1(c).

314.407 Mistakes in bids.

314.407–3 Other mistakes disclosed before award.

(e) Authority has been delegated to the Departmental Protest Control Officer, Office of Acquisition Management, Office of Grants and Acquisition Management to make administrative determinations in connection with mistakes in bid alleged after opening and before award. This authority may not be redelegated.

(f) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

(i) Doubtful cases shall not be submitted by the contracting officer directly to the Comptroller General, but shall be submitted to the Departmental Protest Control Officer.

314.407–4 Mistakes after award.

(c) Authority has been delegated to the Departmental Protest Control Officer to make administrative determinations in connection with mistakes in bid alleged after award. This authority may not be redelegated.

(d) Each proposed determination shall have the concurrence of the Chief, Business Law Branch, Business and Administrative Law Division, Office of General Counsel.

PART 315—CONTRACTING BY NEGOTIATION

Subpart 315.2—Solicitation and Receipt of Proposals and Information

Sec.
315.204 Contract format.
315.204–5 Part IV—Representations and instructions.
315.208 Submission, modification, revision, and withdrawal of proposals.
315.209 Solicitation provisions and contract clauses.

Subpart 315.3—Source Selection

315.305 Proposal evaluation.
315.306 Exchanges with offerors after receipt of proposals.
315.307 Final proposal revisions.
315.370 Finalization of details with the selected source.
315.371 Contract preparation and award.
315.372 Preparation of negotiation memorandum.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.
315.404–2 Information to support proposal analysis.
315.404–4 Profit.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.
315.606 Agency procedures.
315.606–1 Receipt and initial review.
315.609 Limited use of data.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 315.2—Solicitation and Receipt of Proposals and Information

315.204 Contract format.

315.204–5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of offerors.*

(1) This section shall begin with the following and continue with the applicable representations and certifications:

To Be Completed by the Offeror: (The Representations and Certifications must be executed by an individual authorized to bind the offeror.) The offeror makes the following Representations and Certifications as part of its proposal (check or complete all appropriate boxes or blanks on the following pages).

(Name of Offeror) _____

(RFP No.) _____

(Signature of Authorized Individual) _____

_____

(Date) _____

(Typed Name of Authorized Individual) ____

_____

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(c) *Section M, Evaluation factors for award.*

(1) *General.* (i) The evaluation criteria must be developed by the project officer and submitted to the contracting officer in the request for contract (RFC) for inclusion in the request for proposal (RFP). Development of these criteria and the assignment of the relative importance or weight to each criterion require the exercise of judgement on a case-by-case basis because they must be tailored to the requirements of the individual acquisition. Since the criteria will serve as a standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical in the selection of a contractor.

(ii) The finalized evaluation criteria and indications of their relative importance or weight, as included in the RFP, cannot be changed except by a formal amendment to the RFP issued by the contracting officer. No factors other than those set forth in the RFP shall be used in the evaluation of proposals.

(2) *Review of evaluation criteria.*

(i) The evaluation criteria should be reviewed by the contracting officer in terms of the work statement. This review is not intended to dictate technical requirements to the program office or project officer, but rather to ensure that the evaluation criteria are clear, concise, and fair so that all potential offerors are fully aware of the bases for proposal evaluation and are given an equal opportunity to compete.

(ii) The project officer and the contracting officer should then review the evaluation criteria together to ascertain the following:

(A) The criteria are described in sufficient detail to provide the offerors (and evaluators) with a total understanding of the factors to be involved in the evaluation process;

(B) The criteria address the key programmatic concerns which the offerors must be aware of in preparing proposals;

(C) The criteria are specifically applicable to the instant acquisition and are not merely restatements of criteria from previous acquisitions which are not relevant to this acquisition; and

(D) The criteria are selected to represent only the significant areas of importance which must be emphasized rather than a multitude of factors. (All criteria tend to lose importance if too many are included. Using too many criteria will prove as detrimental as using too few.)

(3) *Examples of topics that form a basis for evaluation criteria.* Typical examples of topics that form a basis for the development of evaluation criteria are listed in the following paragraphs. These examples are intended to assist in the development of actual evaluation criteria for a specific acquisition and should only be used if they are applicable to that acquisition. They are not to be construed as actual examples of evaluation criteria to be included in the RFP.

(i) Understanding of the problem and statement of work;

(ii) Method of accomplishing the objectives and intent of the statement of work;

(iii) Soundness of the scientific or technical approach for executing the requirements of the statement of work (to include, when applicable, preliminary layouts, sketches, diagrams, other graphic representations, calculations, curves, and other data necessary for presentation, substantiation, justification, or understanding of the approach);

(iv) Special technical factors, such as experience or pertinent novel ideas in the specific branch of science or technology involved;

(v) Feasibility and/or practicality of successfully accomplishing the requirements (to include a statement and discussion of anticipated major difficulties and problem areas and recommended approaches for their resolution);

(vi) Availability of required special research, test, and other equipment or facilities;

(vii) Managerial capability (ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources, and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previous experience);

(viii) Availability, qualifications, experience, education, and competence of professional, technical, and other personnel, to include proposed subcontractors and consultants (as evidenced by resumes, endorsements, and explanations of previous efforts); and

(ix) Soundness of the proposed staff time or labor hours, propriety of personnel classifications (professional, technical, others), necessity for type and quantity of material and facilities proposed, validity of proposed subcontracting, and necessity of proposed travel.

(4) *Relative importance or weight.*

(i) A statement or indication of the relative importance or weight must be assigned to each evaluation criterion (significant factor) to inform prospective offerors (and evaluators) of the specific significance of each criterion in comparison to the other criteria. Similarly, if a criterion (factor) is subdivided into parts, each of the parts (subfactors) must be assigned a statement or indication of the relative importance or weight.

(ii) Cost or price is not generally included as one of the evaluation criteria and is not assigned an indication of relative importance or weight. However, a statement must be included in the RFP to reflect the relationship of cost or price in comparison to the other criteria. (See FAR 15.304(e)). The contracting officer and project officer should work together in arriving at the final determination regarding the relationship.

315.208 Submission, modification, revision, and withdrawal of proposals.

(b) When the head of the contracting activity (HCA) for a health agency determines that certain classes of biomedical or behavioral research and development acquisitions should be subject to conditions other than those specified in FAR 52.215–1(c)(3), the HCA may authorize the use of the provision at 352.215–70 in addition to the provision at FAR 52.215–1.

(2) When the provision at 352.215–70 is included in the solicitation and a

proposal is received after the exact time specified for receipt, the contracting officer, with the assistance of cost and technical personnel, shall make a written determination as to whether the proposal meets the requirements of the provision at 352.215–70 and, therefore, can be considered.

315.209 Solicitation provisions and contract clauses.

(a) Paragraph (e) of the provision at 352.215–1 shall be used in place of that specified at FAR 52.215–1(e).

(g) If the head of the contracting activity (HCA)(not delegable) has determined that the contracting activity will allow the use of the annual submission of representations and certifications by offerors, the provisions of FAR 14.213 shall be followed.

Subpart 315.3—Source Selection

315.305 Proposal evaluation.

(a) (1) *Cost or price evaluation.* The contracting officer shall evaluate business proposals adhering to the requirements for cost or price analysis included in FAR 15.404. The contracting officer must determine the extent of analysis in each case depending on the amount of the proposal, the technical complexity and related cost or price, and cost realism. The contracting officer should request the project officer to analyze items such as the number of labor hours proposed for various labor categories; the mix of labor hours and categories of labor in relation to the technical requirements of the project; the kinds and quantities of material, equipment, and supplies; types, numbers and hours/days of proposed consultants; logic of proposed subcontracting; analysis of the travel proposed including number of trips, locations, purpose, and travelers; and kinds and quantities of data processing. The project officer shall provide his/her opinion as to whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements shall be supported by adequate rationale to allow for effective negotiations or award if discussions are not conducted. The contracting officer should also request the assistance of a cost/price analyst when considered necessary. In all cases, the negotiation memorandum must include the rationale used in determining that the price or cost is fair and reasonable.

(3) *Technical evaluation.*

(i) Technical evaluation plan.

(A) A technical evaluation plan may be required by the contracting officer, at his/her discretion, when an acquisition is sufficiently complex as to warrant a formal plan.

(B) The technical evaluation plan should include at least the following:

(*1*) A list of recommended technical evaluation panel members, their organizations, a list of their major consulting clients (if applicable), their qualifications, and curricula vitae (if applicable);

(*2*) A justification for using non-Government technical evaluation panel members. (Justification is not required if non-Government evaluators will be used in accordance with standard contracting activity procedures or policies);

(*3*) A statement that there is no apparent or actual conflict of interest regarding any recommended panel member;

(*4*) A copy of each rating sheet, approved by the contracting officer, to be used to assure consistency with the evaluation criteria; and

(*5*) A brief description of the general evaluation approach.

(C) The technical evaluation plan must be signed by an official within the program office in a position at least one level above the project officer, or in accordance with contracting activity procedures.

(D) The technical evaluation plan should be submitted to the contracting officer for review and approval before the solicitation is issued. The contracting officer shall make sure that the principal factors relating to the evaluation are reflected in the evaluation criteria when conducting the review of the plan.

(ii) Technical evaluation panel.

(A) *General.* (*1*) A technical evaluation panel is required for all acquisitions applicable to this subpart which are expected to exceed $500,000 and in which technical evaluation is considered a key element in the determination of making an award . The contracting officer has the discretion to require a technical evaluation panel for acquisitions not exceeding $500,000 based on the complexity of the acquisition.

(*2*) The technical evaluation process requires careful consideration regarding the size, composition, expertise, and function of the technical evaluation panel. The efforts of the panel can result in the success or failure of the acquisition.

(B) *Role of the project officer.* (*1*) The project officer is the contracting officer's technical representative for the acquisition action. The project officer may be a voting member of the technical evaluation panel, and may also serve as the chairperson of the panel, unless he/she is prohibited by law or contracting activity procedures to do so.

(*2*) The project officer is responsible for recommending panel members who are knowledgeable in the technical aspects of the acquisition and who are competent to identify strengths and weaknesses of the various proposals. The program training requirements specified in 307.170 must be adhered to when selecting prospective panel members (government employees).

(*3*) The project officer shall ensure that persons possessing expertise and experience in addressing issues relative to sex, race, national origin, and handicapped discrimination be included as panel members in acquisitions which address those issues. The intent is to balance the composition of the panel so that qualified and concerned individuals may provide insight to other panel members regarding ideas and approaches to be taken in the evaluation of proposals.

(*4*) The project officer is to submit the recommended list of panel members to an official within the program office in a position at least one level above the project officer, or in accordance with contracting activity procedures. This official will review the recommendations and select the chairperson.

(*5*) The project officer shall arrange for adequate and secure working space for the panel.

(C) *Role of the contracting officer.* (*1*) The term ''contracting officer,'' as used in this subpart, may be the contracting officer or his/her designated representative within the contracting office.

(*2*) The contracting officer shall not serve as a member of the technical evaluation panel but should be available to:

(*i*) Address the initial meeting of the technical evaluation panel;

(*ii*) Provide assistance to the evaluators as required; and

(*iii*) Ensure that the scores adequately reflect the written technical report comments.

(D) *Conflict of interest.* (*1*) If a panel member has an actual or apparent conflict of interest related to a proposal under evaluation, he/she shall be removed from the panel and replaced with another evaluator. If a suitable replacement is not available, the panel shall perform the review without a replacement.

(*2*) For the purposes of this subpart, conflicts of interest are defined in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635), Supplemental Standards of Ethical Conduct for Employees of the

Department of Health and Human Services (5 CFR Part 5501), and the Procurement Integrity Act. For outside evaluators serving on the technical evaluation panel, see paragraph (F), (315.305(a)(3)(ii)(F)).

(E) *Continuity of evaluation process.* (*1*) The technical evaluation panel is responsible for evaluating the original proposals, making recommendations to the chairperson regarding weaknesses and deficiencies of proposals, and, if required by the contracting officer, assisting the contracting officer during communications and discussions, and reviewing supplemental, revised and/or final proposal revisions. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment of proposals. The following are examples of circumstances when it would *not* be necessary for the technical evaluation panel to evaluate revised proposals submitted during the acquisition:

(*i*) The answers to questions do not have a substantial impact on the proposal;

(*ii*) Final proposal revisions are not materially different from the original proposals; or

(*iii*) The rankings of the offerors are not affected because the revisions to the proposals are relatively minor.

(*2*) The chairperson, with the concurrence of the contracting officer, may decide not to have the panel evaluate the revised proposals. Whenever this decision is made, it must be fully documented by the chairperson and approved by the contracting officer.

(*3*) When technical evaluation panel meetings are considered necessary by the contracting officer, the attendance of evaluators is mandatory. When the chairperson determines that an evaluator's failure to attend the meetings is prejudicial to the evaluation, the chairperson shall remove and/or replace the individual after discussing the situation with the contracting officer and obtaining his/her concurrence and the approval of the official responsible for appointing the panel members.

(*4*) Whenever continuity of the evaluation process is not possible, and either new evaluators are selected or a reduced panel is decided upon, each proposal which is being reviewed at any stage of the acquisition shall be reviewed at that stage by all members of the revised panel unless it is impractical to do so because of the receipt of an unusually large number of proposals.

(F) *Use of outside evaluators.* (*1*) The National Institutes of Health (NIH) and the Substance Abuse and Mental Health Services Administration (SAMHSA) are required to have a peer review of research and development contracts in accordance with Public Law (Pub. L.) 93–352 as amended by Pub. L. 94–63; 42 U.S.C. 289 1–4. This legislation requires peer review of projects and proposals, and not more than one-fourth of the members of a peer review group may be officers or employees of the United States. NIH and SAMHSA are therefore exempt from the provisions of 315.305(a)(3)(ii) to the extent that 42 U.S.C. 289 1–4 applies. Conflicts of interest are addressed in the Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects (42 CFR Part 52 h).

(*2*) In general, decisions to disclose proposals outside the Government for evaluation purposes shall be made by the official responsible for appointing panel members for the acquisition, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(*3*) When it is determined to disclose a solicited proposal outside the Government for evaluation purposes, the following or similar conditions shall be included in the written agreement with evaluator(s) prior to disclosure:

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

The requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, to effect the purposes of these conditions.

(iii) Receipt of proposals.

(A) After the closing date set by the solicitation for the receipt of proposals, the contracting officer will use a transmittal memorandum to forward the technical proposals to the project officer or chairperson for evaluation. The business proposals will be retained by the contracting officer for evaluation.

(B) The transmittal memorandum shall include at least the following:

(*1*) A list of the names of the organizations submitting proposals;

(*2*) A reference to the need to preserve the integrity of the source selection process;

(*3*) A statement that only the contracting officer is to conduct discussions.

(*4*) A requirement for a technical evaluation report in accordance with 315.305(a)(3)(vi); and

(*5*) The establishment of a date for receipt of the technical evaluation report.

(iv) Convening the technical evaluation panel.

(A) Normally, the technical evaluation panel will convene to evaluate the proposals. However, there may be situations when the contracting officer determines that it is not feasible for the panel to convene. Whenever this decision is made, care must be taken to assure that the technical review is closely monitored to produce acceptable results.

(B) When a panel is convened, the chairperson is responsible for the control of the technical proposals provided to him/her by the contracting officer for use during the evaluation process. The chairperson will generally distribute the technical proposals prior to the initial panel meeting and will establish procedures for securing the proposals whenever they are not being evaluated to insure their confidentiality. After the evaluation is complete, all proposals must be returned to the contracting officer by the chairperson.

(C) The contracting officer shall address the initial meeting of the panel and state the basic rules for conducting the evaluation. The contracting officer shall provide written guidance to the panel if he/she is unable to attend the initial panel meeting. The guidance should include:

(*1*) Explanation of conflicts of interest;

(*2*) The necessity to read and understand the solicitation, especially the statement of work and evaluation criteria, *prior* to reading the proposals;

(*3*) The need for evaluators to restrict the review to only the solicitation and the contents of the technical proposals;

(*4*) The need for each evaluator to review all the proposals;

(*5*) The need to watch for ambiguities, inconsistencies, errors, and deficiencies which should be surfaced during the evaluation process;

(*6*) An explanation of the evaluation process and what will be expected of the evaluators throughout the process;

(*7*) The need for the evaluators to be aware of the requirement to have complete written documentation of the individual strengths and weaknesses which affect the scoring of the proposals; and

(*8*) An instruction directing the evaluators that, until the award is made, information concerning the acquisition must not be disclosed to any person not directly involved in the evaluation process.

(v) Rating and ranking of proposals. The evaluators will individually read each proposal, describe tentative strengths and weaknesses, and develop preliminary scores in relation to each evaluation criterion set forth in the solicitation. After this has been accomplished, the evaluators shall discuss in detail the individual strengths and weakness described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). Each evaluator will score each proposal, and then the technical evaluation panel will collectively rank the proposals. Generally, ranking will be determined by adding the numerical scores assigned to the evaluation criteria and finding the average for each offeror. The evaluators should then identify whether each proposal is acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(vi) Technical evaluation report. A technical evaluation report shall be prepared and furnished to the contracting officer by the chairperson and maintained as a permanent record in the contract file. The report must reflect the ranking of the proposals and identify each proposal as acceptable or unacceptable. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal, a copy of each rating sheet, and any reservations, qualifications, or areas to be addressed that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal must be included. The report should also include specific points and questions which are to be raised in discussions or negotiations.

315.306 Exchanges with offerors after receipt of proposals.

(c) *Competitive range.* (1) Some of the factors which the contracting officer should consider in determining the competitive range are:

(i) The relative importance of cost or price as compared to technical factors;

(ii) The susceptibility of significantly reducing a proposal with an unreasonable high price or cost without undermining the technical merit if the offeror otherwise has a reasonable chance to receive an award; and

(iii) The likelihood of reducing cost or price of a proposal which exceeds the Government's requirements.

(2) The contracting officer shall conduct a thorough review of the technical evaluation report to be assured that:

(i) All determinations of unacceptability are supported by concrete and comprehensive statements that are factual and convincing and are consistent with the evaluation criteria set forth in the solicitation. Every statement should be reviewed carefully to eliminate any doubts as to the unacceptability of a proposal;

(ii) All recommendations to exclude proposals from the competitive range are supported by persuasive rationale and sufficient facts to substantiate a judgment that meaningful discussions are not possible or there is no reasonable chance of the proposal being selected for award;

(iii) Those cases where only one organization is found to be technically acceptable are fully scrutinized; and

(iv) Unacceptable proposals contain ''information'' deficiencies which are so material as to preclude any possibility of upgrading the proposal to a competitive level except through major revisions and additions which would be tantamount to the submission of another proposal.

(d) *Exchanges with offerors after establishment of the competitive range.* The contracting officer and project officer should discuss the uncertainties and/or deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the project officer and/or the technical evaluation panel and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the contracting officer with assistance from the project officer and/or panel as required. The method of requesting offerors in the competitive range to submit the additional information will vary depending on the complexity of the questions, the extent of additional information requested, the time needed to analyze the responses, and the time frame for making the award. However, to the extent practicable, all questions and answers should be in writing. Each offeror in the competitive range shall be given an equitable period of time for preparation of responses to questions to the extent practicable. The questions should be developed so as to disclose the ambiguities, uncertainties, and deficiencies of the offeror.

315.307 Final proposal revisions.

(b) Final proposal revisions are subject to a final evaluation of price or cost and other salient factors by the contracting officer and project officer with assistance from a cost/price analyst, and an evaluation of technical factors by the technical evaluation panel, as necessary. Proposals may be technically rescored and reranked by the technical evaluation panel and a technical evaluation report prepared. To the extent practicable, the evaluation shall be performed by the same evaluators who reviewed the original proposals.

315.370 Finalization of details with the selected source.

(a) After selection of the successful proposal, finalization of details with the selected offeror may be conducted if deemed necessary. However, no factor which could have any effect on the selection process may be introduced after the common cutoff date for receipt of final proposal revisions. The finalization process shall not in any way prejudice the competitive interest or rights of the unsuccessful offerors. Finalization of details with the selected offeror shall be restricted to definitizing the final agreement on terms and conditions, assuming none of these factors were involved in the selection process.

(b) Caution must be exercised by the contracting officer to insure that the finalization process is not used to change the requirements contained in the solicitation, nor to make any other changes which would impact on the source selection decision. Whenever a material change occurs in the requirements, the competition must be reopened and all offerors submitting final proposal revisions must be given an opportunity to resubmit proposals based on the revised requirements. Whenever there is a question as to whether a change is material, the contracting officer should obtain the advice of technical personnel and legal counsel before reopening the competition. Significant changes in the

offeror's cost proposal may also necessitate a reopening of competition if the changes alter the factors involved in the original selection process.

(c) Should finalization details beyond those specified in paragraph (a) of this section be required for any reason, discussions must be reopened with all offerors submitting final proposal revisions.

(d) Upon finalization of details, the contracting officer should obtain a confirmation letter from the successful offeror which includes any revisions to the technical proposal, the agreed to price or cost, and, as applicable, a certificate of current cost or pricing data.

315.371 Contract preparation and award.

(a) The contracting officer must perform the following actions after finalization details have been completed:

(1) Prepare the negotiation memorandum in accordance with 315.372;

(2) Prepare the contract containing all agreed to terms and conditions and clauses required by law or regulation;

(3) Include in the contract file the pertinent documents referenced in FAR 4.803; and

(4) Obtain the appropriate approval of the proposed contract award(s) in accordance with Subpart 304.71 and contracting activity procedures.

(b) After receiving the required approvals, the contract should be transmitted to the prospective contractor for signature. The prospective contractor must be informed that the contract is not effective until accepted by the contracting officer.

(c) The contract shall not be issued until the finance office certifies that the funds are available for obligation.

315.372 Preparation of negotiation memorandum.

The negotiation memorandum or summary of negotiations is a complete record of all actions leading to award of a contract and is prepared by the contract negotiator to support the source selection decision discussed in FAR 15.308. It should be in sufficient detail to explain and support the rationale, judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments in concluding a satisfactory agreement for the Government. Negotiation memorandums shall contain discussion of the following or a statement of nonapplicability; however, information already contained in the contract file need not be reiterated. A reference to the document which contains the required information is acceptable.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance should be set forth (if Supplemental Agreement—show previous contract amount as revised, as well as information with respect to the period of performance).

(b) *Acquisition planning.* Summarize or reference any acquisition planning activities that have taken place.

(c) *Synopsis of acquisition.* A statement as to whether the acquisition has or has not been publicized in accordance with FAR Subpart 5.2. A brief statement of explanation should be included with reference to the specific basis for exemption under the FAR, if applicable.

(d) *Contract type.* Provide sufficient detail to support the type of contractual instrument recommended for the acquisition. If the contract is a cost-sharing type, explain the essential cost-sharing features.

(e) *Extent of competition.* The extent to which full and open competition was solicited and obtained must be discussed. The discussion shall include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision.

(f) *Technical evaluation.* Summarize or reference the results presented in the technical evaluation report.

(g) *Business evaluation.* Summarize or reference results presented in the business report.

(h) *Competitive range (if applicable).* Describe how the zone of consideration or competitive range was determined and state the offerors who were included in the competitive range and the ones who were not.

(i) *Cost breakdown and analysis.* Include a complete cost breakdown together with the negotiator's analysis of the estimated cost by individual cost elements. The negotiator's analysis should contain information such as:

(1) A comparison of cost factors proposed in the instant case with actual factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item.

(2) Any pertinent Government-conducted audit of the proposed contractor's record of any pertinent cost advisory report.

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, material and other direct expenses.

(4) Any other pertinent information to fully support the basis for and rationale of the cost analysis.

(5) If the contract is an incentive type, discuss all elements of profit and fee structure.

(6) A justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering the requirements of FAR 15.404–4 and HHSAR 315.404–4.

(j) *Cost realism*. Describe the cost realism analysis performed on proposals.

(k) *Government-furnished property and Government-provided facilities.* With respect to Government-furnished or Government-provided facilities, equipment, tooling, or other property, include the following:

(1) Where no property is to be provided, a statement to that effect.

(2) Where property is to be provided, a full description, the estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent has not been determined and is left open for future resolution, a detailed explanation.

(l) *Negotiations.* Include a statement as to the date and place negotiations were conducted, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the statement of work, terms and conditions, and special provisions. The results of cost or price negotiations must include the information required by FAR 31.109 and 15.406–3. In addition, if cost or pricing data was required to be submitted and certified, the negotiation record must also contain the extent to which the contracting officer relied upon the factual cost or pricing data submitted and used in negotiating the cost or price.

(m) *Other considerations.* Include coverage of areas such as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payment, advance payment, etc., is necessary. Also cite any required D & F's.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Other required special approvals.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also, a determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded by full and open competition, state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor, and it is aware of its responsibilities. Also state whether or not a clearance is required.

(9) If the contract is for services, a statement must be made, in accordance with FAR 37.103, that the services to be acquired are nonpersonal in nature.

(n) *Terms and conditions.* Identify the general and special clauses and conditions that are contained in the contract, such as option arrangements, incremental funding, anticipatory costs, deviations from standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions must be stated and, where applicable, the document which granted approval for its use identified.

(o) *Recommendation.* A brief statement setting forth the recommendations for award.

(p) *Signature.* The memorandum must be signed by the contract negotiator who prepared the memorandum.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.

315.404–2 Information to support proposal analysis.

(a)(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, contracting officers may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information is to be used instead of the audit report and the field pricing report.

(3) When initiating audit and field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO), with an information copy to the cognizant audit office. When field pricing support is not available, the contracting officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office of Audits' Regional Audit Director. In both cases, the contracting officer shall, in the request:

(i) Prescribe the extent of the support needed;

(ii) State the specific areas for which input is required;

(iii) Include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules);

(iv) Provide the complete address of the location of the offeror's financial records that support the proposal;

(v) Identify the office having audit responsibility if other than the HHS Regional Audit Office; and

(vi) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed.) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/OA/DAC. Whenever an audit review has been conducted by the Office of Audits, two (2) copies of the memorandum of negotiation shall be forwarded to OIG/OA/DAC by the contracting officer.

315.404–4 Profit.

(b) *Policy.* (1) The structured approach for determining profit or fee (hereafter referred to as profit) provides contracting officers with a technique that will ensure consideration of the relative value of the appropriate profit factors described in 315.404–4(d) in the establishment of a profit objective for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to him/her prior to negotiations. The information is furnished in proposals, audit data, assessment reports, preaward surveys and the like. The structured approach also provides a basis for documentation of this objective, including an explanation of any significant departure from this objective in reaching an agreement. The extent of documentation should be directly related to the dollar value and complexity of the proposed acquisition. Additionally, the negotiation process does not require agreement on either estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the cost objective and any proposed sharing arrangement. Since profit is merely one of several interrelated variables, the Government negotiator generally should not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual profit factors is not required and should not be attempted.

(ii) The profit-analysis factors set forth at FAR 15.404–4(d) shall be used for establishing profit objectives under the following listed circumstances. Generally, it is expected that this method will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of the profit objective); however, factors within FAR 15.404–4(d) considered inapplicable to the acquisition will be excluded from the profit objective.

(A) Contracts not expected to exceed $100,000;

(B) Architect-engineer contracts;

(C) Management contracts for operations and/or maintenance of Government facilities;

(D) Construction contracts;

(E) Contracts primarily requiring delivery of material supplies by subcontractors;

(F) Termination settlements; and

(G) Cost-plus-award-fee contracts (However, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement). Other exceptions may be made in the negotiation of contracts having unusual pricing situations, but shall be justified in writing by the contracting officer in situations where the structured approach is determined to be unsuitable.

(c) *Contracting officer responsibilities.* A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, constitutes an appropriate amount of profit for the acquisition being considered. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Development of a profit objective should not begin until a thorough review of proposed contract work has been made; a review of all available knowledge regarding the contractor pursuant to FAR Subpart 9.1, including audit data, preaward survey reports and financial statements, as appropriate, has been conducted; and an

analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost has been made.

(d) *Profit—analysis factors*—(1) *Common factors.* The following factors shall be considered in all cases in which profit is to be negotiated. The weight ranges listed after each factor shall be used in all instances where the structured approach is used.

Profit factors	Weight ranges (percent)
Contractor effort:	
Material acquisition	1 to 5.
Direct labor	4 to 15.
Overhead	4 to 9.
General management (G&A).	4 to 8.
Other costs	1 to 5.
Other factors:	
Cost risk	0 to 7.
Investment	−2 to +2.
Performance	−1 to +1.
Socioeconomic programs.	−.5 to +.5.
Special situations.	

(i) Under the structured approach, the contracting officer shall first measure ''Contractor Effort'' by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included for the computation of profit as part of the cost base. The suggested categories under ''Contractor Effort'' are for reference purposes only. Often individual proposals will be in a different format, but since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(ii) After computing a total dollar profit for ''Contractor Effort,'' the contracting officer shall then calculate the specific profit dollars assigned for cost risk, investment, performance, socioeconomic programs, and special situations. This is accomplished by multiplying the total Government Cost Objective, exclusive of any cost of money for facilities capital, by the specific weight assigned to the elements within the ''Other Factors'' category. Form HHS–674, Structured Approach Profit/Fee Objective, should be used, as appropriate, to facilitate the calculation of this profit objective. Form HHS–674 is illustrated in 353.370–674.

(iii) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them.

(iv) The structured approach was designed for arriving at profit objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the structured approach can be used as a basis for arriving at profit objectives for nonprofit organizations. Therefore, the structured approach, as modified in paragraph (d)(1)(iv)(B) of this section, shall be used to establish profit objectives for nonprofit organizations.

(A) For purposes of this section, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(B) For contracts with nonprofit organizations where profit is involved, an adjustment of up to 3 percentage points will be subtracted from the total profit objective percentage. In developing this adjustment, it will be necessary to consider the following factors;

(*1*) Tax position benefits;

(*2*) Granting of financing through advance payments; and

(*3*) Other pertinent factors which may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

(2) *Contractor effort.* Contractor effort is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirement in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and material into the final service or product called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. A major consideration, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed, and the unusual demands of the contract, such as whether the project involves a new approach unrelated to existing technology and/or equipment or only refinements to these items. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Material acquisition.* (Subcontracted items, purchased parts, and other material.) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required subcontracted items, purchased parts, material or services. The contracting officer shall determine whether the contractor will obtain the items or services by routine order from readily available sources or by detailed subcontracts for which the prime contractor will be required to develop complex specifications. Consideration shall also be given to the managerial and technical efforts necessary for the prime contractor to select subcontractors and to perform subcontract administration functions. In application of this criterion, it should be recognized that the contribution of the prime contractor to its purchasing program may be substantial. Normally, the lowest unadjusted weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(ii) *Direct Labor.* (Professional, service, manufacturing and other labor). Analysis of the various labor categories of the cost content of the contract should include evaluation of the comparative quality and quantity of professional and semiprofessional talents, manufacturing and service skills, and experience to be employed. In evaluating professional and semiprofessional labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed in contrast to nonprofessional effort. The assessment should consider the contribution this talent will provide toward the achievement of contract objectives. Since nonprofessional labor is relatively plentiful and rather easily obtained by the contractor and is less critical to the successful performance of contract objectives, it cannot be weighted nearly as high as professional or semiprofessional labor. Service contract labor should be evaluated in a like manner by assigning higher weights to engineering or professional type skills required for contract performance. Similarly, the variety of manufacturing and other categories of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, categories of labor (i.e., quality control, receiving and

inspection, etc.) which do not fall within the definition for professional, service or manufacturing labor may be categorized as appropriate. However, the same evaluation considerations as outlined above will be applied.

(iii) *Overhead and general management* (G&A). (A) Analysis of these overhead items of cost should include the evaluation of the makeup of these expenses and how much they contribute to contract performance. To the extent practicable, analysis should include a determination of the amount of labor within these overhead pools and how this labor should be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit considerations that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses, such as utilities and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(B) It is not necessary that the contractor's accounting system break down overhead expenses within the classifications of research overhead, other overhead pools, and general administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system reflects only one overhead rate on all direct labor need not change its system (if CAS exempt) to correspond with the above classifications. The contracting officer, in an evaluation of such a contractor's overhead rate, could break out the applicable sections of the composite rate which could be classified as research overhead, other overhead pools, and general and administrative expenses, and follow the appropriate evaluation technique.

(C) Management problems surface in various degrees and the management expertise exercised to solve them should be considered as an element of profit. For example, a contract for a new program for research or an item which is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons should be adjusted downward because many of the problems should have been solved. In any event, an evaluation should be made of the underlying managerial effort involved on a case-by-case basis.

(D) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses in connection with each acquisition action for substantially the same project with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, that weight assigned may be used for future acquisitions with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or the factors discussed in paragraph (d)(2)(iii)(C) of this section are involved.

(iv) *Other costs.* Analysis of this factor should include all other direct costs associated with contractor performance (e.g., travel and relocation, direct support, and consultants). Analysis of these items of cost should include, the significance of the cost of contract performance, nature of the cost, and how much they contribute to contract performance. Normally, travel costs require minimal administrative effort by the contractor and, therefore, usually receive a weight no greater than 1%. Also, the contractor may designate individuals as ''consultants'' but in reality these individuals may be obtained by the contractor to supplement its workforce in the performance of routine duties required by contract. These costs would normally receive a minimum weight. However, there will be instances when the contractor may be required to locate and obtain the services of consultants having expertise in fields such as medicine or human services. In these instances, the contractor will be required to expend greater managerial and technical effort to obtain these services and, consequently, the costs should receive a much greater weight.

(3) *Other factors*—(i) *Contract cost risk.* The contract type employed basically determines the degree of cost risk assumed by the contractor. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit should be less than where the contractor assumes all the risk.

(A) In developing the prenegotiation profit objective, the contracting officer will need to consider the type of contract anticipated to be negotiated and the contractor risk associated therewith when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This factor should be one of the most important in arriving at prenegotiation profit objective. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes; the reliability of the cost estimates in relation to the task assumed; and the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, risks on the part of the contractor such as reputation, losing a commercial market, risk of losing potential profits in other fields, or any risk which falls on the contracting office, such as the risk of not acquiring a satisfactory report, are not within the scope of this factor.

(B) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-a-fixed-fee contract requiring the contractor to use its best efforts to perform a task and a firm fixed-price contract for a service or a complex item. A cost-plus-a-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility. Where proper contract selection has been made, the regard for risk by contract type would usually fall into the following percentage ranges:

	Percent
Cost-reimbursement type contracts	0–3
Fixed-price type contracts	2–7

(C) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior experience assists the contractor in preparing reliable cost estimates on new acquisitions for similar related efforts. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(D) The third determination is that of the difficulty of the contractor's task.

The contractor's task can be difficult or easy, regardless of the type of contract.

(E) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum in the structured approach. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(*1*) Type of contract and percentage ranges for profit objectives developed by using the structured approach for research and development and manufacturing contracts:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee:	
With cost incentive only	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive:	
With cost incentive only	2 to 4.
With multiple incentives	3 to 5.
Prospective price redetermination.	3 to 5.
Firm fixed-price	5 to 7.

(*2*) Type of contract and percentage ranges for profit objectives developed by using the structured approach for service contracts:

	Percent
Cost-plus-fixed-fee	0 to 0.5.
Cost-plus-incentive fee	1 to 2
Fixed-price incentive	2 to 3.
Firm fixed-price	3 to 4.

(F) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(G) The contractor's subcontracting program may have a significant impact on the contractor's acceptance or risk under a contract form. It could cause risk to increase or decrease in terms of both cost and performance. This consideration should be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation may, as a result, be below the range which would otherwise apply for the contract type being proposed. The contract cost risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk.

(H) In making a contract cost risk evaluation in an acquisition action that involves definitization of a letter contract, unpriced change orders, and unpriced orders under basic ordering agreements, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances—not just the portion of costs incurred or percentage of work completed prior to definitization.

(I) Time and material and labor hour contracts will be considered to be cost-plus-a-fixed-fee contracts for the purpose of establishing profit weights unless otherwise exempt under 315.404–4(b)(ii) in the evaluation of the contractor's assumption of contract cost risk.

(ii) *Investment.* HHS encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. The evaluation of this factor should include an analysis of the following:

(A) *Facilities.* (Including equipment). To evaluate how this factor contributes to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors who furnish their own facilities which significantly contribute to lower total contract costs should be provided with additional profit. On the other hand, contractors who rely on the Government to provide or finance needed facilities should receive a corresponding reduction in profit. Cases between the above examples should be evaluated on their merits with either positive or negative adjustments, as appropriate, in profit being made. However, where a highly facilitized contractor is to perform a contract which does not benefit from this facilitization or where a contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted. When applicable, the prospective contractor's computation of facilities capital cost of money for pricing purposed under CAS 414 can help the contracting officer identify the level of facilities investment to be employed in contract performance.

(B) *Payments.* In analyzing this factor, consideration should be given to the frequency of payments by the Government to the contractor. The key to this weighting is to give proper consideration to the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for advance payments and payments more frequent than monthly with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly with additional consideration given for a capital turn-over rate on the contract which is less than the contractor's or the industry's normal capital turn-over rate.

(iii) *Performance.* (Cost-control and other past accomplishments.) The contractor's past performance should be evaluated in such areas as quality of service or product, meeting performance schedules, efficiency in cost control (including need for and reasonableness of cost incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions, and management of subcontract programs. Where a contractor has consistently

achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, this performance merits a proportionately greater opportunity for profit. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit.

(iv) *Federal socioeconomic programs.* This factor, which may apply to special circumstances or particular acquisitions, relates to the extent of a contractor's successful participation in Government sponsored programs such as small business, small disadvantaged business, women-owned small business, and energy conservation efforts. The contractor's policies and procedures which energetically support Government socioeconomic programs and achieve successful results should be given positive considerations. Conversely, failure or unwillingness on the part of the contractor to support Government socioeconomic programs should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(v) *Special situations*—(A) *Inventive and developmental contributions.* The extent and nature of contractor-initiated and financed independent development should be considered in developing the profit objective, provided that the contracting officer has made a determination that the effort will benefit the contract. The importance of the development in furthering health and human services purposes, the demonstrable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources should be weighed.

(B) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor wherein it agrees to cost ceilings, e.g., a ceiling on overhead rates for conditions other than those discussed at FAR 42.707. In these circumstances, the contractor should receive favorable consideration in developing the profit objective.

(C) *Negative factors.* Special situations need not be limited to those which only increase profit levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off-benefits as a direct result of the contract (e.g., products or services with commercial application).

(4) *Facilities capital cost of money.* When facilities capital cost of money (cost of capital committed to facilities) is included as an item of cost in the contractor's proposal, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with the Facilities Capital Cost-of Money Cost Principal. If the contractor does not propose this cost, a provision must be inserted in the contract that facilities capital cost of money is not an allowable cost.

Subpart 315.6—Unsolicited Proposals

315.605 Content of unsolicited proposals.

(d) Certification by offeror—To ensure against contracts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in FAR 15.604 resulting in an unfair advantage to an offeror, the contracting officer shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

Unsolicited Proposal

Certification by Offeror

This is to certify, to the best of my knowledge and belief, that:

(a) This proposal has not been prepared under Government supervision.

(b) The methods and approaches stated in the proposal were developed by this offeror.

(c) Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in FAR 15.604.

(d) No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

315.606 Agency procedures.

(a) The HCA is responsible for establishing procedures to comply with FAR 15.606(a).

(b) The HCA or his/her designee shall be the point of contract for coordinating the receipt and handling of unsolicited proposals.

315.606–1 Receipt and initial review.

(d) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the grounds that they lack scientific merit.

315.609 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in FAR 15.609(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with FAR 15.604(a) (7):

The Government will attempt to comply with the ''Use and Disclosure of Data'' legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

PART 316—TYPES OF CONTRACTS

Subpart 316.3—Cost-Reimbursement Contracts

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Subpart 316.7—Agreements

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 316.3—Cost-Reimbursement Contracts

316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit), modify the ''Allowable Cost and Payment'' clause at FAR 52.216–7 by deleting from paragraph (a) the words ''Subpart 31.2 of the Federal Acquisition Regulation (FAR)'' and substituting ''45 CFR Part 74 Appendix E.''

(j) The contracting officer shall insert the clause at 352.216–72, Additional

Cost Principles, in all solicitations and resultant cost-reimbursement contracts.

Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

316.603 Letter contracts.

316.603–3 Limitations.

An official one level above the contracting officer shall execute the prescribed written statement.

316.603–70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of a proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

316.603–71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved one level above the contracting officer. Request for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603–70(j) must be included.

Subpart 316.7—Agreements

316.770 Unauthorized types of agreements.

316.770–1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

316.770–2 Memorandums of understanding.

A ''memorandum of understanding'' is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

PART 317—SPECIAL CONTRACTING METHODS

Subpart 317.2—Options

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 317.2—Options

317.201 Definitions.

An option must:

(a) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(b) Establish a price or specify a method of calculation which will make the price certain;

(c) Be agreed to and included in the initial contract award; and

(d) Permit the Government the right to exercise the option unilaterally.

Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training under the Government Employees Training Act (GETA), 5 U.S.C. Chapter 41.

317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training are contained in HHS Personnel Manual Instruction 410–1.

317.7102 Acquisition of training.

(a) Off-the-shelf training, whether for individuals or for groups of employees, shall be acquired under the GETA by officials delegated authority in HHS Transmittal 95.5, Personnel Manual (3/30/95).

(b) Training must be acquired through the contracting office if there are costs for training course development or for modification of off-the-shelf training courses.

PART 319—SMALL BUSINESS PROGRAMS

Subpart 319.2—Policies

Subpart 319.5—Set-Asides for Small Business

Subpart 319.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 319.2—Policies

319.201 General policy.

(b) The functional management responsibilities for the Department's small, small disadvantaged, and women-owned small business programs are delegated to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU).

(d) The Head of each OPDIV shall appoint a qualified full-time small business specialist (SBS) in the following activities: Administration for Children and Families (ACF), Health Care Financing Administration (HCFA), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Centers for Disease Control and Prevention (CDCP), and Program Support Center (PSC). A SBS shall also be appointed for the Office of the Secretary (OS). As deemed necessary, additional small business specialists may be appointed in larger contracting activities.

(1) When the volume of contracting does not warrant assignment of a full-time SBS, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over other responsibilities. The specialist shall be responsible directly to the appointing authority and shall be at an organizational level outside the direct acquisition chain of command, i.e., should report directly to the head of the contracting activity (HCA), where appropriate.

(2) The Director, OSDBU will exercise functional management authority over small business specialists regarding small, small disadvantaged, and women-owned small business programs. Appointments of SBS's shall only be made after consultation with the Director, OSDBU. A copy of each appointment and termination of appointment of specialists shall be forwarded to the Director, OSDBU.

Subpart 319.5—Set-Asides for Small Business

319.501 General.

(c) Prior to the contracting officer's review, the SBS shall review each proposed acquisition to determine the feasibility of recommending a small business set-aside. The SBS's recommendation shall be entered on Form HHS–653, Small Business Set Aside Review Form, with the reasons for the type of set-aside recommended, or the reasons for not recommending a set-aside, and provided to the contracting officer. Upon receipt of the Form HHS–653, the contracting officer shall promptly concur or nonconcur with the SBS's recommendation. The contracting officer will make the final determination as to whether the proposed acquisition will be set-aside or not. If the contracting officer approves the SBS's set-aside recommendation, the proposed acquisition will be set-aside as specified. However, if the contracting officer disapproves the SBS's set-aside recommendation, the reasons must be documented on the Form HHS–653, and the form signed. (See 319.505 for options available to the SBS regarding the contracting officer's disapproval of a set-aside recommendation.) In all cases, the completed Form HHS–653 is to be retained by the contracting officer and placed in the contract file.

319.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects the SBS's recommendation for a set-aside and an SBA procurement center representative (PCR) is not assigned or available, the SBS may appeal, in writing, to the head of the contracting activity (HCA). The SBS shall provide the HCA all the pertinent information concerning the set-aside disagreement, and the HCA shall respond in writing within seven working days. The HCA's decision is final and not appealable. The decision by the HCA shall be attached to the Form HHS–653 and placed in the contract file. After receipt of a final decision by the HCA, and if the decision approves the action of the contracting officer, the SBS shall forward, for information and management purposes, complete documentation of the case to the OSDBU Director. Documentation transmitted shall include, as a minimum, a copy of the appeal memorandum submitted to the HCA, a copy of the IFB or RFP, a list of proposed sources, a copy of the Form HHS–653 and attachments completed by the SBS and the contracting officer, a copy of the HCA's decision, and all other written material considered by the HCA in arriving at the decision. The SBS's transmittal memorandum shall contain an affirmative statement that the attachments constitute the complete file reviewed and considered by the HCA in making the final decision. If an SBA PCR is assigned or available and the SBS refers the case to that person, the SBA PCR may either concur with the decision of the contracting officer not to set-aside the proposed acquisition or recommend to the contracting officer that it be set-aside. For the SBA PCR to make a comprehensive review, at least the following should be provided as attachments to the Form HHS–653: the statement of work, evaluation criteria, Government cost estimate, source list including size of firms, and a copy of any justification for other than small business considerations that may be applicable. Once the case has been referred to the SBA PCR, no further appeal action shall be taken by the SBS. (Refer to FAR 19.505 for the procedures available to the SBA PCR if the contracting officer rejects the set-aside recommendation.)

319.506 Withdrawing or modifying set-asides.

(d) Immediately upon notice from the contracting officer, the SBS shall provide telephone notification regarding all set-aside withdrawals to the OSDBU Director.

Subpart 319.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

319.705–5 Awards involving subcontracting plans.

(a)(3) The SBA PCR shall be allowed a period of one to five working days to review the contract award package, depending upon the circumstances and complexity of the individual acquisition.

PART 323—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 323.70—Safety and Health

Sec.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 323.70—Safety and Health

323.7000 Scope of subpart.

This subpart prescribes the use of a safety and health clause in contracts involving hazardous materials or operations, and provides procedures for administering safety and health provisions.

323.7001 Policy.

Various statutes and regulations (e.g. Walsh-Healy Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. The guidance contained in FAR Subpart 23.3 shall be used for hazardous materials as the primary reference. When the guidance is judged insufficient or does not meet the safety and health situation in the instant acquisition, this subpart shall be followed.

323.7002 Actions required.

(a) *Contracting activities.* Contracting activities shall use the clause set forth in 352.223–70, or a clause reading substantially the same, in prospective contracts and subcontracts involving hazardous materials or operations for the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on the contractor's premises.

(b) *Safety officers.* OPDIV safety officers shall advise and assist initiators of acquisition requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Evaluating a prospective contractor's safety and health programs; and

(3) Conducting post-award reviews and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for contract, and in the solicitation, ensure that hazardous materials and operations to be used in the performance of the contract are clearly identified; and

(2) During the period of performance:

(i) Apprise the contracting office of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Subpart 324.2—Freedom of Information Act

Subpart 324.70—Confidentiality of Information

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 324.1—Protection of Individual Privacy

324.100 Scope of subpart.

This subpart implements 45 CFR Part 5b, Privacy Act Regulations, and FAR Subpart 24.1, Protection of Individual Privacy, which implements the Privacy Act of 1974 (Pub. L. 93–579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A–108, July 9, 1975.

324.102 General.

(a) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the Department's implementation under 45 CFR Part 5b apply ''when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function * * *'' The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function.

(e) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed acquisition. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed acquisition.

(f) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records (see Subpart 324.70).

324.103 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall include the solicitation notification and contract clause required by FAR 24.104 in the solicitation, and the contract clause in the resultant contract. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this subpart are included in any contract modification which results in the Privacy Act requirements becoming applicable to a contract.

(b)(1) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(2) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that the contractor assure that each contractor employee knows the prescribed rules of conduct, and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR 5b.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) Whenever an acquisition is determined to be subject to the Privacy

Act requirements, a ''system notice,'' prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the **Federal Register**. A copy of the ''system notice'' shall be attached to the request for contract or purchase request. If a ''system notice'' is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the contract file. If a ''system notice'' has not been published in the **Federal Register**, the contracting officer may proceed with the acquisition but shall not award the contract until the ''system notice'' is published, and publication is verified by the contracting officer.

Subpart 324.2—Freedom of Information Act

324.202 Policy.

(a) The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5.

(b) The contracting officer, upon receiving a FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the Business and Administrative Law Division of the Office of General Counsel. The contracting officer must remember that only the FOI Officer has the authority to release or deny release of records. While the contracting officer should be familiar with the entire FOIA regulation in 45 CFR Part 5, particular attention should be focused on sections 5.65 and 5.66; also of interest are sections 5.32, 5.33, and 5.35.

Subpart 324.70—Confidentiality of Information

324.7001 General.

In performance of certain HHS contracts, it is necessary for the contractor to generate data, or be furnished data by the Government, which is about individuals, organizations, or Federal programs. This subpart and the accompanying contract clause require contractors to prudently handle disclosure of certain types of information not subject to the Privacy Act or the HHS human subject regulations set forth in 45 CFR Part 46. This subpart and contract clause address the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how it should be treated.

324.7002 Policy.

It is the policy of HHS to protect personal interests of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of the information. As a result, the ''Confidentiality of Information'' contract clause was developed.

324.7003 Applicability.

(a) The ''Confidentiality of Information'' clause, set forth in 352.224–70, should be used in solicitations and resultant contracts whenever the need exists to keep information confidential. Examples of situations where the clause may be appropriate include:

(1) Studies performed by the contractor which generate information or involve Government-furnished information that is personally identifiable, such as medical records, vital statistics, surveys, and questionnaires;

(2) Contracts which involve the use of salary structures, wage schedules, proprietary plans or processes, or confidential financial information of organizations other than the contractor's; and

(3) Studies or research which may result in preliminary or invalidated findings which, upon disclosure to the public, might create erroneous conclusions which, if acted upon, could threaten public health or safety.

(b) With regard to protecting individuals, this subpart and contract clause are not meant to regulate or control the method of selecting subjects and performing studies or experiments involving them. These matters are dealt with in the HHS regulation entitled ''Protection of Human Subjects,'' 45 CFR Part 46. If a system of records under contract, or portions thereof, is determined to be subject to the requirements of the Privacy Act, in accordance with FAR 24.1 and 324.1 and Title 45 CFR Part 5b, the procedures cited in those references are applicable and the Privacy Act contract clause shall be included in the contract. If the contract also involves confidential information, as described herein, which is not subject to the Privacy Act, the contract shall include the ''Confidentiality of Information'' clause in addition to the Privacy Act clause.

324.7004 Required clause.

The clause set forth in 352.224–70 shall be included in any RFP and resultant contract(s) where it has been determined that confidentiality of information provisions may apply. Any RFP announcing the intent to include this clause in any resultant contract(s) shall indicate, as specifically as possible, the types of data which would be covered and requirements for handling the data.

PART 325—FOREIGN ACQUISITION

Subpart 325.1—Buy American Act—Supplies

Sec.

Subpart 325.3—Balance of Payments Program

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 325.1—Buy American Act—Supplies

325.102 Policy.

(b) The head of the contracting activity (not delegable) shall make the determinations required by FAR 25.102(a)(1) through (5) and 25.102(b)(2).

325.108 Excepted articles, materials, and supplies.

(b) Articles, materials, and supplies not listed in FAR 25.108(d) may be excepted only after a written determination has been made by the head of the contracting activity (not delegable). These determinations are required only in instances where it has been determined that only suppliers of foreign source end items shall be solicited. However, approvals and determinations covering individual acquisitions in the following categories may be made by the contracting officer:

(1) Acquisition of spare and replacement parts for foreign manufactured items, if the acquisition must be restricted to the original manufacturer or its supplier; and

(2) Acquisition of foreign drugs when it has been determined, in writing, by the responsible program official, that only the requested foreign drug will fulfill the requirement.

Subpart 325.3—Balance of Payments Program

325.302 Policy.

All determinations addressed in FAR 25.302 shall be made by the head of the contracting activity (not delegable).

PART 328—BONDS AND INSURANCE

Subpart 328.3—Insurance

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 328.3—Insurance

328.301 Policy.

It is Department policy to limit the Government's reimbursement of its contractors' liability to third persons for claims not covered by insurance in cost-reimbursement contracts to the Limitations of Funds or Limitation of Cost clause of the contract. In addition, the amount of the Government's reimbursement will be limited to final judgments or settlements approved in writing by the Government.

328.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

328.311–2 Agency solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 352.228–7, Insurance—Liability to Third Persons, in all solicitations and resulting cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7 required by FAR 28.311–1.

PART 330—COST ACCOUNTING STANDARDS

Subpart 330.2—CAS Program Requirements

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 330.2—CAS Program Requirements

330.201 Contract requirements.

330.201–5 Waiver.

(c) The requirements of FAR 30.201–5 shall be exercised by the Director, Office of Acquisition Management (DOAM). Requests for waivers shall be forwarded through normal acquisition channels to the DOAM.

PART 332—CONTRACT FINANCING

Subpart 332.4—Advance Payments

Subpart 332.5—Progress Payments Based on Cost

Subpart 332.7—Contract Funding

Subpart 332.9—Prompt Payment

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 332.4—Advance Payments

332.402 General.

(e) The determination that the making of an advance payment is in the public interest (see FAR 32.402(c)(1)(iii)(A)) shall be made by the respective chief of the contracting office (CCO) (not delegable).

332.403 Applicability.

All contracts for research work with educational institutions located in the United States shall provide for financing by use of advance payments, in reasonable amounts, unless otherwise prohibited by law.

332.407 Interest.

(d) The HCA (not delegable) is authorized to make the determinations in FAR 32.407(d) and as follows. In addition to the interest-free advance payments for the types of contracts listed in FAR 32.407(d), advance payments without interest may be approved for nonprofit contracts which are without fee with educational institutions and other nonprofit organizations, whether public or private, which are for the performance of work involving health services, educational programs, or social service programs, including, but not limited to, programs such as:

(1) Community health representative services for an Indian Tribe or Band;

(2) Narcotic addict rehabilitative services;

(3) Comprehensive health care service program for Model Neighborhood programs;

(4) Planning and development of health maintenance organizations;

(5) Dissemination of information derived from educational research;

(6) Surveys or demonstrations in the field of education;

(7) Producing or distributing educational media for handicapped persons including captioned films for the hearing impaired;

(8) Operation of language or area centers;

(9) Conduct of biomedical research and support services;

(10) Research surveys or demonstrations involving the training and placement of health manpower and health professionals, and dissemination of related information; and

(11) Surveys or demonstrations in the field of social service.

332.409 Contracting officer action.

332.409–1 Recommendation for approval.

The information in FAR 32.409–1 (or FAR 32.409–2) shall be transmitted to the HCA in the form of a briefing memorandum.

Subpart 332.5—Progress Payments Based on Cost

332.501 General.

332.501–2 Unusual progress payments.

(a)(3) The approval of an unusual progress payment shall be made by the head of the contracting activity (HCA) (not delegable).

Subpart 332.7—Contract Funding

332.702 Policy.

An incrementally funded contract is a contract in which the total work effort is to be performed over multiple time periods and funds are allotted to cover discernible phases or increments of performance.

(a) Incremental funding may be applied to cost-reimbursement type contracts for the acquisition of research and development and other types of nonpersonal, nonseverable services. It shall not be applied to contracts for construction services, architect-engineer services, or severable services. Incremental funding allows nonseverable cost-reimbursement contracts, awarded for more than one year, to be funded from succeeding fiscal years.

(b) It is departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(1) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are

not currently available to cover the entire project;

(2) The project represents a valid need for the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(3) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(4) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

332.703 Contract funding requirements.

332.703–1 General.

(b) The following general guidelines are applicable to incrementally funded contracts:

(1) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive acquisition, approval or award, etc.

(2) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(3) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments, and the multiple year period of performance.

(4) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(5) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(6) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on the program office's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(7) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate the program office's ultimate decision to allot additional funds under the contract.

332.704 Limitation of cost or funds.

For detailed instruction regarding administrative actions in connection with anticipated cost overruns, see Subpart 342.71.

332.705 Contract clauses.

332.705–2 Clauses for limitation of costs or funds.

(c)(1) When using the Limitation of Funds clause (FAR 52.232–22) in the solicitation and resultant incrementally funded contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the Limitation of Cost clause found in the General Provisions of this contract)

(2) The contracting officer shall also include a clause reading substantially as that shown in 352.232–74 in the Special Provisions of the resultant incrementally funded contract.

(3) The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the provision at 352.232–75 in the request for proposals whenever the use of incremental funding is contemplated.

Subpart 332.9—Prompt Payment

332.902 Definitions.

Fiscal office means the office responsible for: determining whether interest penalties are due a contractor and, if so, the amount; determining whether an invoice offers a financially advantageous discount; maintaining records for and submission of prompt payment reports to the Deputy Assistant Secretary, Finance (DASF), ASMB, OS; and processing payments to the Treasury Department to allow for payment to a contractor when due. The fiscal office shall fulfill the roles of the ''designated billing office'' and the ''designated payment office.''

PART 333—PROTESTS, DISPUTES, AND APPEALS

Subpart 333.1—Protests

Subpart 333.2—Disputes and Appeals

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 333.1—Protests

333.102 General.

(a) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner and are submitted by interested parties. To be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) calendar days after the basis for protest is known or should have been known, whichever is earlier. Provided a protest has been filed initially with the contracting officer, any subsequent protest to the Secretary or GAO filed within ten (10) calendar days of notification of adverse action will be considered. Written confirmation of all oral protests shall be requested from protestants and must be timely filed.

(d)(1) The Office of Acquisition Management (OAM) has been designated as the headquarters office to serve as the liaison for protests lodged with GAO. Within the OAM, the Departmental Protest Control Officer (DPCO) has been designated as the individual to be contacted by GAO.

(3) Each contracting activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior acquisition specialist in the headquarters acquisition staff office. In addition, contracting activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Director, OAM.

333.103 Protests to the agency.

(a)(2) The contracting officer is authorized to make the determination, using the criteria in FAR 33.103(a), to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and the Office of General Council—Business and Administrative Law Division (OGC–BAL). If the protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, approval shall also be obtained from the Director, OAM before making the award.

(3) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with the applicable provisions in 333.102(a). In the following cases, written protests received by the contracting officer before award shall be forwarded, through acquisition channels, to the DPCO for processing. Files concerning these protests shall be submitted in duplicate, by the most expeditious means, marked ''IMMEDIATE ACTION—PROTEST BEFORE AWARD'', and contain the documentation referenced in 333.104(a)(3).

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary, or is addressed to either; or

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General. Otherwise, protests addressed to the contracting officer may be answered by the contracting officer, with the concurrence of the contracting activity's protest control officer and OGC–BAL.

(4) Protests received after award shall be treated as indicated in 333.103(a)(3).

333.104 Protests to GAO.

(a) *General.* (3) Protests lodged with GAO, whether before or after award, shall be processed by the DPCO. Protest files shall be prepared by the contracting office and distributed as follows: two copies to the DPCO, one copy to the contracting activity's protest control officer, and one copy to OGC–BAL. Files shall include the following documentation:

(i) The contracting officer's statement of facts and circumstances, including a discussion of the merits of the protest, and conclusions and recommendations, including documentary evidence on which they are based.

(ii) A copy of the IFB or RFP.

(iii) A copy of the abstract of bids or proposals.

(iv) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(v) A copy of the bid or proposal of the protestant, if any.

(vi) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(vii) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate (see FAR 33.104(c)(4)).

(viii) Copies of the notice of protest given offerors and other parties when the notice is appropriate (see FAR 33.104 (a)(4)).

(ix) A copy of the technical evaluation report, when applicable, and a copy of each evaluator's rating for all proposals.

(x) A copy of the negotiation memorandum, when applicable.

(xi) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest.

(xii) A copy of the competitive range memorandum. and

(xiii) Any document which is referred to in the contracting officer's statement of facts. The files shall be assembled in an orderly manner and shall include an index of enclosures.

(4) The contracting officer is responsible for making the necessary notifications referenced in FAR 33.104 (a)(4). Copies of the views of interested parties submitted in response to the notification shall be immediately provided to the DPCO upon receipt by the contracting officer.

(5) The contracting officer shall furnish the protest file containing the documentation specified in 333.104(a)(3), except item (a)(3)(i), to the DPCO within fourteen (14) calendar days from receipt of the protest. The contracting officer shall provide the documentation required by item (a)(3)(i) of 333.104 to the DPCO within twenty-one (21) calendar days from receipt of the protest. Since the statute allows only a short time period in which to respond to protests lodged with GAO, the contracting officer shall handle each protest on a priority basis. The DPCO shall prepare the report and submit it and the protest file to GAO in accordance with FAR 33.104(a)(5).

(6)(i) Take DPCO shall take the necessary actions specified in FAR 33.104(a)(6)(i) after receiving all the documentation required by 333.104(a)(3) from the contracting officer.

(ii) Since the DPCO will furnish the report to GAO, the protestor, and other interested parties, comments on the report from the protestor and other interested parties will be requested to be sent to the DPCO.

(7) The Office of Acquisition Management (OAM) has been designated as the headquarters office, and the DPCO as the individual, that GAO should contract concerning all protests lodged with GAO.

(b) *Protests before award.* (1) To make an award notwithstanding a protest, the contracting officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the head of the contracting activity (HCA)(not delegable), and forward it, along with a written request for approval to make the award, to the Director, OAM.

(2) If the request to make an award notwithstanding the protest is approved by the Director, OAM, the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control officer of the decision of the Director, OAM, and the contracting activity's protest control officer shall immediately notify the contracting officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

(4) The contracting officer shall prepare the protest file in accordance with 333.104(a)(3), and forward it, in duplicate, to the DPCO (see 333.104(a)(5)).

(c) *Protests after award.* (2) If the contracting officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the contracting officer, executed by the HCA (not

delegable), and forwarded, along with a written request for approval, to the Director, OAM. The same procedures for notification stated in 333.104(b)(2) shall be followed.

(6) The contracting officer shall prepare the protest file in accordance with 333.104(a)(3), and forward it, in duplicate, to the DPCO (see 333.104 (a)(5)).

(d) *Findings and notice.* The contracting officer shall perform the actions required by FAR 33.104 (d); however, notification to GAO shall be made by the DPCO.

(g) *Notice to GAO.* The Deputy Assistant Secretary for Grants and Acquisition Management shall be the official to comply with the requirements of FAR 33.104 (g).

(i) *Express option.* When GAO invokes the express option, the contracting officer shall prepare the complete protest file as described in 333.104 (a)(3), to include item (a)(3)(i), and deliver it (hand-carry, if necessary) to the DPCO in time to meet the submittal date established by GAO. The DPCO will notify the contracting officer of the submittal date after GAO has finalized its requirements.

Subpart 333.2—Disputes and Appeals

333.203 Applicability.

(c) The Armed Services Board of Contract Appeals (ASBCA) has been designated by the Secretary as the authorized ''Board'' to hear and determine disputes for the Department.

333.209 Suspected fraudulent claims.

The contracting officer shall submit any instance of a contractor's suspected fraudulent claim to the Office of the Inspector General for investigation.

333.211 Contracting officer's decision.

(a)(2) The contracting officer shall refer a proposed final decision to the Office of General Counsel, Business and Administrative Law Division (OGC–BAL), for advice as to the legal sufficiency and format before sending the final decision to the contractor. The contracting officer shall provide OGC–BAL with the pertinent documents with the submission of each proposed final decision.

(a)(4)(v) When using the paragraph in FAR 33.211 (a)(4)(v), the contracting officer shall insert the words ''Armed Services'' before each mention of the term ''Board of Contract Appeals''.

(h) At any time within the period of appeal, the contracting officer may modify or withdraw his/her final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his/her recommended action to OGC–BAL with the supplement to the contract file which supports the recommended correction or amendment.

333.212 Contracting officer's duties upon appeal.

(a) Appeals shall be governed by the rules set forth in the ''Rules of the Armed Services Board of Contract Appeals'', or by the rules established by the U.S. Court of Federal Claims, as appropriate.

(b) OGC–BAL is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. A decision by the ASBCA will be transmitted by the Government Trial Attorney to the appropriate contracting officer for compliance in accordance with the ASBCA's decision.

(c) If an appeal is filed with the ASBCA, the contracting officer shall assemble a file within 30 days of receipt of an appeal, or advice that an appeal has been filed, that consists of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witness on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent. The contracting officer shall furnish the appeal file to the Government Trial Attorney for review and approval. After approval, the contracting officer shall prepare four copies of the file, one for the ASBCA, one for the appellant, one for the Government Trial Attorney, and one for the contracting office.

(d) At all times after the filing of an appeal, the contracting officer shall render whatever assistance is requested by the Government Trial Attorney. When an appeal is set for hearing, the concerned contracting officer, acting under the guidance of the Government Trial Attorney, shall be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and hearing.

(e) If a contractor which has filed an appeal with the ASBCA elects to accept fully the decision from which the appeal was taken, or any modification to it, and gives written notification of acceptance to the Government Trial Attorney or the concerned contracting officer, the Government Trial Attorney will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

(f) If the contractor has elected to appeal to the U.S. Court of Federal Claims, the U.S. Department of Justice will represent the Department. However, the contracting officer shall still coordinate all actions through OGC–BAL.

333.212–70 Formats.

(a) The following format is suggested for use in transmitting appeal files to the ASBCA:

Your reference: _____ _____
(Docket No.)

(Name)

Recorder, Armed Services Board of Contract Appeals
Skyline Six
5109 Leesburg Pike
Falls Church, Virginia 22041

Dear (Name):

Transmitted herewith are documents relative to the appeal under Contract No. _____ with the (name of contractor) in accordance with the procedures under Rule 4.

The Government Trial Attorney for this case is (Insert Division of Business and Administrative Law, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201).

The request for payment of charges resulting from the processing of this appeal should be addressed to:

_____
(Insert name and address of cognizant finance office.)

_____

Sincerely yours,
Contracting Officer

Enclosures

(b) The following format is suggested for use in notifying the appellant that the appeal file was submitted to the ASBCA:

(Contractor Address)

_____
_____
_____

Dear _____: _____

An appeal file has been compiled relative to the appeal under Contract No. _____, and has been submitted to the Armed Services Board of Contract Appeals (ASBCA). The enclosed duplicate of the appeal file is identical to that submitted to the Board, except that contract documents which you already have been excluded. You may furnish or suggest any additional information deemed pertinent to the appeal to the Armed

Services Board of Contract Appeals according to their rules.

The ASBCA will provide you with further information concerning this appeal.

Sincerely yours,
Contracting Officer
Enclosure

333.213 Obligation to continue performance.

(a) The Disputes clause at FAR 52.233–1 shall be used without the use of Alternate I. However, if the contracting officer determines that the Government's interest would be better served by use of paragraph (i) in Alternate I, he/she must request approval for its use from the chief of the contracting office.

PART 334—MAJOR SYSTEM ACQUISITION

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

334.003 Agency head responsibilities.

The Department's implementation of OMB Circular No. A–109 may be found in Chapter 1–150 of the General Administration Manual.

PART 335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
335.070 Cost-sharing.
335.070–1 Policy.
335.070–2 Amount of cost-sharing.
335.070–3 Method of cost-sharing.
335.070–4 Contract award.
335.071 Special determinations and findings affecting research and development contracting.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

335.070 Cost-sharing.

335.070–1 Policy.

(a) The use of cost-sharing type contracts should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost-sharing is intended to serve the mutual interests of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. Encouragement should be given to organizations to contribute to the cost of performing research under contracts unless the contracting officer determines that a request for cost-sharing would not be appropriate because of the following circumstances:

(1) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government request for proposals for a specific project.

(2) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(3) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost-sharing should generally not be requested if cost-sharing would require the Government to provide funds through some other means (such as fees) to enable the organization to cost-share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b) The responsibility for negotiating cost-sharing is that of the contracting office. Each research contract file should show whether the contracting officer considered cost-sharing appropriate for that particular contract and in what amount. If cost-sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., ''Because the contractor will derive no benefits from this award that can be applied to its commercial activities, cost-sharing is not considered appropriate.'' The contracting officer may wish to coordinate with the project officer before documenting this decision.

(c) If the contracting officer considers cost-sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost-sharing, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

335.070–2 Amount of cost-sharing.

When cost-sharing is determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor.

(a) The amount of cost participation should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of this enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development have little or no production or other service activities and may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, contractor cost participation could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of the total project cost. Ultimately, the contracting officer should bear in mind that cost-sharing is a negotiable item. As such, the amount of cost-sharing should be proportional to the anticipated value of the contractor's gain.

(b) If the performing organization will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, it would generally be appropriate to obtain less cost-sharing than in cases in which the performer acquires these rights.

(c) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost-sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing costs of the project.

(d) The organization's participation may be considered over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another.

(e) A relatively low degree of cost-sharing may be appropriate if, in the view of the operating divisions or their subordinate elements, an area of research requires special stimulus in the national interest.

335.070–3 Method of cost-sharing.

Cost-sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any

independent research and development program).

335.070–4 Contract award.

In consonance with the Department's objectives of competition and support of the small business program, award of contracts should not be made solely on the basis of ability or willingness to cost-share. Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible. The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

335.071 Special determinations and findings affecting research and development contracting.

OPDIV heads for health agencies shall sign individual and class determinations and findings for:

(a) Acquisition or construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(a)(7); and

(b) Use of an indemnification provision in a research contract pursuant to 42 U.S.C. 241(a)(7).

PART 342—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 342.7—Indirect Cost Rates

342.705 Final indirect cost rates.

The Director, Division of Cost Allocation of the Program Support Center within the servicing HHS regional office has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

Subpart 342.70—Contract Monitoring

342.7001 Purpose.

Contract monitoring is an essential element of contract administration and the acquisition process. This subpart describes the Department's operating concepts regarding contract monitoring, performed jointly by the project officer and the contracting officer, to ensure that the required monitoring is performed, timely remedial action is taken when necessary, and a determination is made that contract objectives have been met.

342.7002 Contract monitoring responsibilities.

(a) Upon execution of the contract, the mutual obligations of the Government and the contractor are established by, and limited to, the written stipulations in the contract. Unless authorized by the contracting officer, HHS personnel shall not direct or request the contractor to assume any obligation or take any actions not specifically required by the contract. Only the contracting officer may impose a requirement which will result in a change to the contract. All contract changes must be directed in writing or confirmed in writing by the contracting officer.

(b) The contracting officer is responsible for assuring compliance with all terms of the contract, especially the statutory, legal, business, and regulatory provisions. Whether or not a postaward conference is held, the contracting officer shall inform the contractor by letter (if not already stipulated by contract provisions) of the authorities and responsibilities of the Government personnel with whom the contractor will be dealing throughout the life of the contract.

(c) The contracting officer must depend on program, technical, and other personnel for assistance and advice in monitoring the contractor's performance, and in other areas of postaward administration. The contracting officer must assure that responsibilities assigned to these personnel are understood and carried out. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract to assist or advise the contracting officer (or act as his/her representative when so designated by the contracting officer) in activities such as:

(i) Providing technical monitoring during contract performance, and issuing letters to the contractor and contracting officer relating to delivery, acceptance, or rejection in accordance with the terms of the contract;

(ii) Assessing contractor performance, including inspection and testing of products and evaluation of reports and data;

(iii) Recommending necessary changes to the schedule of work and period of performance in order to accomplish the objectives of the contract. This shall be accomplished by a written request to the contracting officer, together with an appropriate justification and funds availability citation;

(iv) Reviewing invoices/vouchers and recommending approval/disapproval action by the contracting officer, to include comments regarding anything unusual discovered in the review;

(v) Reviewing and recommending approval or disapproval of subcontractors, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The role of the project officer in performing required aspects of the contract monitoring process. In addition to those applicable activities set forth in paragraph (c)(1) of this section, the project officer shall:

(i) Submit periodic reports to the contracting officer that concisely explain the status of the contract, and include recommended actions for any problems reported. Provide the contracting officer with written notification of evaluation and approval/disapproval of contract deliverables and of completion of tasks or phases. The contracting officer will, in turn, provide the contractor with written notification of approval or disapproval unless the responsibility has been delegated by the contracting officer, in which case the person responsible for such action will notify the contractor and provide a copy to the contracting officer for inclusion in the contract file;

(ii) Monitor the technical aspects of the contractor's business and technical progress, identify existing and potential problems that threaten performance, and immediately inform the contracting officer of deviations from contract objectives, or from any technical or delivery requirements, so that remedial measures may be instituted accordingly;

(iii) Provide immediate notification to the head of the program office responsible for the program whenever it is determined that program objectives are not being met, together with specific

recommendations of action to be taken. A copy of the project officer's report and recommendation shall be transmitted to the contracting officer for appropriate action;

(iv) Submit, within 120 days after contract completion, a final assessment report to the contracting officer. The report should include analysis of the contractor's performance, including the contract and program objectives achieved and misses. A copy of the final assessment report shall be forwarded to the head of the program office responsible for the program for management review and follow-up, as necessary; and

(v) Accompany and/or provide, when requested, technical support to the HHS auditor in the conduct of floor checks.

(3) The role of the contract administrator, auditor, cost analyst, and property administrator in assisting or advising the contracting officer in postaward administration activities such as:

(i) Evaluation of contractor systems and procedures, to include accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, etc.;

(ii) Processing of disputes under the Disputes clause and any resultant appeals;

(iii) Modification or termination of the contract; and

(iv) Determination of the allowability of cost charges to incentive or cost-reimbursement type contracts and progress payments under fixed-price contracts. This is especially important when award is made to new organizations or those with financial weaknesses.

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being take by the contracting officer.

342.7003 Withholding of contract payments.

342.7003–1 Policy.

(a) All solicitations and resultant contracts shall contain a withholding of contract payments clause and an excusable delays clause, or a clause which incorporates the definition of excusable delays.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in the preceding paragraph (c).

342.7003–2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment officer.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The contracting officer should consult FAR Subpart 49.4 for further guidance before taking any of the actions described in this section.

342.7003–3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the contracting officer is to immediately notify the servicing finance office in writing of the determination to suspend payments. The notice of suspension is to contain all elements of information required by the payment office to properly identify the contract and the applicable accounts involved.

(b) The contracting officer is to immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the contracting officer is to immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the contracting officer must be careful not to waive any of the Government's rights when corresponding with the

contractor or when taking any other actions.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to be followed when a cost overrun is anticipated; i.e., the allowable actual cost of performing a cost-reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

342.7101 Contract administration.

342.7101–1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, the contracting officer shall verify the information with the contractor, and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7101–2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall inform the contractor to submit a request for additional funds which is to include:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating overrun.

(4) The elements of cost which changed from the original estimate (i.e., labor, material, travel, overhead, etc.) to be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate, and

(v) Amount of adjustment.

(5) The factors responsible for the increase, i.e., error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of an impending overrun, the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received;

(2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and

(3) Maintain continuous follow-up with the program office to obtain a timely decision as to whether the work under the contract should be continued and additional funds provided, or the contract terminated. The decision of the program office must be supported by an appropriate written statement and funding authority, or a formal request for termination, when applicable. After a programming and funding decision is received from the program office, the contracting officer shall promptly notify the contractor in writing that:

(i) A specified amount of additional funds has been allotted to the contract by a contractual instrument; or

(ii) Work will be discontinued when the funds allotted to the contract have been exhausted, and that any work performed after that date is at the contractor's risk; or

(iii) The Government is considering whether additional funds should be allotted to the contract and will notify the contractor as soon as possible, but that any work performed after the funds then allocated to the contract have been exhausted is at the contractor's risk. Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

(c) If program requirements permit, contracting officers should refrain from issuing any contractual documents which will require new work or an extension of time, pending resolution of an overrun or additional fund request.

342.7102 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either:

(1) A provision increasing the estimated or ceiling amount referred to in the Limitation of Cost clause of the contract and stating that the clause will thereafter apply in respect to the increased amount; or

(2) A provision stating that the estimated or ceiling amount referred to in the contract is not changed by the modification and that the Limitation of Cost clause will continue to apply with respect to the amount in effect prior to the modification.

(b) A fixed-fee provided in a contract shall not be changed when funding a cost overrun. Changes in fixed-fee will be made only to reflect changes in the scope of work which justify an increase or decrease in fee.

PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 352.2—Texts of Provisions and Clauses

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 352.2—Texts of Provisions and Clauses

352.202–1 Definitions.

As prescribed in 302.201, the FAR Definitions clause at 52.202–1 is to be used as modified:

Definitions (Jan 1997)

(a) Substitute the following as paragraph (a):

''(a) The term ''Secretary'' or ''Head of the Agency'' (also called ''Agency Head'') means the Secretary, Under Secretary, or any Assistant Secretary, Administrator or Commissioner of the Department of Health and Human Services; and the term ''his/her duly authorized representative'' means any person, persons, or board authorized to act for the Secretary.''

(b) Add the following paragraph (h) or its alternate, as appropriate:

(h) The term ''Project Officer'' means the person representing the Government for the purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the price of this contract or a change in the delivery dates or performance period of this contract.''

or

Alternate:

''(h) The term ''Project Officer'' means the person representing the Government for the

purpose of technical monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost of this contract or a change in performance period of this contract. In addition, the Project Officer is not authorized to receive or act upon the Contractor's notification of a revised cost estimate pursuant to the Limitation of Cost or Limitation of Funds clause of this contract.''

352.215–1 Instructions to offerors—Competitive acquisition.

Insert the following paragraph (e) in place of paragraph (e) of the provision at FAR 52.215–1:

(e) *Restriction on disclosure and use of data.* (1) The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. The legend reads:

Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that the Department may not be able to withhold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).

(2) In addition, the offeror should mark each page of data it wishes to restrict with the following statement:

''Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.''

(3) Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

352.215–70 Late proposals and revisions.

As prescribed in 315.208, the following provision may be included in the solicitation:

Late Proposals and Revisions (Nov 1986)

Notwithstanding the procedures contained in FAR 52.215–1(c)(3) of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, a proposal received after the date specified for receipt may be considered if it offers significant cost or technical advantages to the Government; and it was received before proposals were distributed for evaluation, or within five calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

352.216–72 Additional cost principles.

As prescribed in 316.307(j), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Additional Cost Principles (Oct 90)

(a) *Bid and proposal costs.* (1) Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) Bid and proposal costs of the current accounting period are allowable as indirect costs.

(3) Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

(4) Bid and proposal costs do not include independent research and development costs covered by the following paragraph, or preaward costs covered by paragraph 33 of Attachment B to OMB Circular A–122.

(b) *Independent research and development costs.* (1) Independent research and development is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The cost of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

352.223–70 Safety and health.

The following clause, or one reading substantially the same, shall be used as prescribed in 323.7002:

Safety and Health (Jan 1998)

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Contractor shall comply with all Federal, State and local laws and regulations applicable to the work being performed under this contract. These laws are implemented and/or enforced by the Environmental Protection Agency, Occupational Safety and Health Administration and other agencies at the Federal, State and local levels (Federal, State and local regulatory/enforcement agencies).

(b) Further, the Contractor shall take or cause to be taken additional safety measures as the Contracting Officer, in conjunction with the project or other appropriate officers, determines to be reasonably necessary. If compliance with these additional safety measures results in an increase or decrease in the cost or time required for performance of any part of work under this contract, an equitable adjustment will be made in accordance with the applicable ''Changes'' clause set forth in this contract.

(c) The Contractor shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; and/or damage to property incidental to work performed under the contract *and* all violations for which the Contractor has been cited by any Federal, State or local regulatory/enforcement agency. The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(d) If the Contractor fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any

stop work order shall be subject to a claim for extension of time or costs or damages by the Contractor.

(e) The Contractor shall insert the substance of this clause in each subcontract involving toxic substances, hazardous materials, or hazardous operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of Clause)

352.224–70 Confidentiality of information.

The following clause is covered by the policy set forth in Subpart 324.70 and is to be used in accordance with the instructions set forth in 324.7004.

Confidentiality of Information (Apr 1984)

(a) Confidential information, as used in this clause, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in paragraph (a) of this clause, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the ''Disputes'' clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract, or a portion thereof, is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in paragraph (a) of this clause, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution, or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in paragraph (b) of this clause. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and the Contracting Officer will be settled pursuant to the ''Disputes'' clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) Contracting Officer determinations will reflect the result of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

352.228–7 Insurance—Liability to third persons.

As prescribed in 328.311–2, contracting officers shall include the following clause in all cost-reimbursement contracts, in lieu of the clause at FAR 52.228–7:

Insurance—Liability to Third Persons (Dec 1991)

(a)(1) Except as provided in paragraph (a)(2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed:

(1) For that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or the Contractor's agents, servants, or employees, and must be represented by final judgements or settlements approved in writing by the Government.

These liabilities are for:

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgements, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities):

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract:

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided,* that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall:

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government,

when the liability is not insured or covered by the bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the successful offeror represents in the offer that the offeror is *partially* immune from tort liability as a State agency, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided,* that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, to liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the successful offeror represents in the offer that the offeror is *totally* immune from tort liability as a State agency, substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claims or litigation

(End of clause)

352.232–9 Withholding of contract payments.

Insert the following clause in all solicitations and contracts other than purchase orders:

Withholding of Contract Payments (Apr 1984)

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled ''Excusable Delays'' or ''Default'', as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.232–74 Estimated cost and fixed fee-Incrementally funded contract.

The following clause, or one reading substantially as it, shall be included in the Special Provisions of an incrementally funded contract:

Consideration-Estimated Cost and Fixed Fee (Apr 1984)

(a) It is estimated that the total cost to the Government for full performance of this contract will be $_____, of which the sum of $_____ represents the estimated reimbursable costs and $_____ represents the fixed-fee.

(b) Total funds currently available for payment and allotted to this contract are $_____, of which $ represents the estimated reimbursement costs and $_____ represents the fixed-fee. For further provisions on funding, see the Limitations of Funds clause.

(c) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by (date) _____.

(d) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

(End of clause)

352.232–75 Incremental funding.

The following provision shall be included in all requests for proposals whenever the use of incremental funding is contemplated:

Incremental Funding (Apr 1984)

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled Limitation of Funds. Under the clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Funds clause to be included in the resultant contract shall supersede the Limitation of Cost clause found in the General Provisions.

(End of provision)

352.233–70 Litigation and claims.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (Apr 1984)

The Contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and any claim against the Contractor the cost and expense of which is allowable under the clause entitled ''Allowable Cost and Payment.'' Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract. (End of clause)

352.242–71 Final decisions on audit findings.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Final Decisions on Audit Findings (Apr 1984)

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1–105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

(End of clause)

352.249–14 Excusable delays.

Insert the following clause in all solicitations and resultant contracts other than purchase orders which do not have either a default or excusable delays clause.

Excusable Delays (Apr 1984)

(a) Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless: the supplies or services to be furnished by the subcontractor were obtainable from other sources, the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting officer shall ascertain the facts and extent of such failure and, if he/she shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the termination clause hereof. (As used in this clause, the terms ''subcontractor'' and ''subcontractors'' mean subcontractor(s) at any tier.)

(End of clause)

352.270–1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

The following clause is to be used in accordance with 370.102:

Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities (Jan 1999)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth in 28 CFR 36.101–36.500 and Appendix A: ADA Accessibility Guidelines (ADAAG). The plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. The Contractor shall determine, by an on-site inspection, that the facility meets these requirements.

(1) *Parking.* Parking shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(2) *Entrances.* Entrances shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(3) *Meeting Rooms.* Meeting rooms, including seating arrangements, shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. In addition, stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramp may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the Project Officer and the Contractor must provide assistance to negotiate access to the stage or platform.

(4) *Restrooms.* Restrooms shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(5) *Eating Facilities.* Eating facilities in the meeting facility must also comply with 28 CFR 36.101–36.500 and Appendix A.

(6) *Overnight Facilities.* If overnight accommodations are required, the facility providing the overnight accommodations shall also comply with 28 CFR 36.101–36.500 and Appendix A.

(7) *Water Fountains.* Water fountains shall comply with 28 CFR 36.101–36.500 and Appendix A.

(8) *Telephones.* Public telephones shall comply with 28 CFR 36.101–36.500 and Appendix A.

(c) *Provisions of Services for Attendees with Sensory Impairments.*

(1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to persons with sensory impairments attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that persons with sensory impairments may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a telecommunication device for the deaf (TDD).

(2) The Contractor shall provide, at no additional cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For persons with hearing impairments, qualified interpreters. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For persons with vision impairments, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for persons with sensory impairments. Readers, braille translations, large print text, and/or tape recordings are all acceptable. These materials shall be available to individuals with sensory impairments upon their arrival.

(4) The Contractor is responsible for making a reasonable effort to ascertain the number of individuals with sensory impairments who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no person with sensory impairment in attendance, the provision of those services under paragraph (c) of this clause for the nonrepresented group, or groups, is not required.

(End of clause)

352.270–2 Indian preference.

The following clause shall be used as prescribed in 370.202(a):

Indian Preference (Apr 1984)

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, those needs may be

satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled ''Equal Opportunity.''

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(e) As used in this clause:

(1) ''Indian'' means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of the Tribe.

(2) ''Indian Tribe'' means an Indian Tribe, pueblo, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) ''Indian organization'' means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) ''Indian-owned economic enterprise'' means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active *operation* and *control* of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f) of this clause, in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–3 Indian preference program.

The following clause shall be used as prescribed in 370.202(b):

Indian Preference Program (Apr 1984)

(a) In addition to the requirements of the clause of this contract entitled ''Indian Preference,'' the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than twenty (20) calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93–638 (88 Stat. 2205; 25 U.S.C. 450e(b)); Definitions for the terms ''Indian organization'' and ''Indian-owned economic enterprise'' as prescribed under the ''Indian Preference'' clause of this contract; A statement to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract. If one or more responsible bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the ''Indian Preference'' clause of this contract.

(5) Maintain written records under this contract which indicate: The numbers of Indians seeking employment for each employment position available under this contract; The number and types of positions filled by Indians and non-Indians, and the total number of Indians employed under this contract; For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; Reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract; and The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Contractor's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms ''Indian,'' ''Indian Tribe,'' ''Indian Organization,'' and ''Indian-owned economic enterprise'' are defined in the clause of this contract entitled ''Indian Preference.''

(2) ''Indian reservation'' includes Indian reservations, public domain Indian

Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*)

(3) ''On or near an Indian Reservation'' means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270–4 Pricing of adjustments.

Insert the following clause in all solicitations and resultant fixed-priced contracts other than purchase orders.

Pricing of Adjustments (Apr 1984)

When costs are a factor in determination of a contract price adjustment pursuant to the ''Changes'' clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation.	Commercial.
(b) Subpart 31.3 of the Federal Acquisition Regulation.	Educational.
(c) Subpart 31.6 of the Federal Acquisition Regulation.	State or local governments.
(d) 45 CFR Part 74 Appendix E.	Hospitals.
(e) Subpart 31.7 of the Federal Acquisition Regulation.	Other nonprofit institutions.

(End of clause)

352.270–5 Key personnel.

Insert the following clause in all solicitations and resultant cost-reimbursement contracts.

Key Personnel (Apr 1984)

The personnel specified in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The contract may be modified from time to time during the course of the contract to either add or delete personnel, as appropriate.

(End of clause)

352.270–6 Publications and Publicity.

Insert the following clause in all solicitations and resultant contracts.

Publications and Publicity (Jul 1991)

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other publication is published, and furnish a copy of it as finally published.

(b) The Contractor shall include in any publication resulting from work performed under this contract a disclaimer reading as follows:

The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

(End of clause)

352.270–7 Paperwork Reduction Act.

Insert the following clause in all solicitations and contracts.

Paperwork Reduction Act (Apr 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties, the Paperwork Reduction Act of 1995 (Pub. L. 104–13) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB). Contractors and Project Officers should be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring OMB clearance.

(b) The Contractor shall obtain the required OMB clearance through the Project Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and proceed with the collection of information shall be in writing by the Contracting Officer. The Contractor must plan at least 120 days for OMB clearance. Excessive delays caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the Excusable Delays or Default clause of this contract

(End of clause)

352.270–8 Protection of human subjects.

(a) The following provision shall be included in solicitations expected to involve human subjects:

Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects (Jan 1999)

(a) Copies of the Department of Health and Human Services (Department) regulations for the protection of human subjects, 45 CFR Part 46, are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, Maryland 20892. The regulations provide a systematic means, based on established ethical principles, to safeguard the rights and welfare of individuals who participate as subjects in research activities supported or conducted by the Department.

(b) The regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research contains data through intervention or interaction with the individual, or identifiable private information. The regulations extend to the use of human organs, tissue, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.

(c) Activities in which the only involvement of human subjects will be in one or more of the categories set forth in 45 CFR 46.101(b)(1–6) are exempt from coverage.

(d) Inappropriate designations of the noninvolvement of human subjects or of exempt categories of research in a project may result in delays in the review of a proposal. The National Institutes of Health will make a final determination of whether the proposed activities are covered by the regulations or are in an exempt category, based on the information provided in the proposal. In doubtful cases, prior consultation with OPRR, (telephone: 301–496–7014), is recommended.

(e) In accordance with 45 CFR Part 46, prospective Contractors being considered for award shall be required to file with OPRR an acceptable Assurance of Compliance with the regulations, specifying review procedures and assigning responsibilities for the protection of human subjects. The initial and continuing review of a research project by an institutional review board shall assure that the rights and welfare of the human subjects involved are adequately protected, that the risks to the subjects are reasonable in relation to the potential benefits, if any, to the subjects and the importance of the knowledge to be gained, and that informed

consent will be obtained by methods that are adequate and appropriate. Prospective Contractors proposing research that involves human subjects shall be contacted by OPRR and given detailed instructions for establishing an institutional review board and filing an Assurance of Compliance.

(f) It is recommended that OPRR be consulted for advice or guidance concerning either regulatory requirements or ethical issues pertaining to research involving human subjects.

(End of provision)

(b) The following clause shall be included in solicitations and resultant contracts involving human subjects:

Protection of Human Subjects (Jan 1999)

(a) The Contractor agrees that the rights and welfare of human subjects involved in research under this contract shall be protected in accordance with 45 CFR Part 46 and with the Contractor's current Assurance of Compliance on file with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), Public Health Service. The Contractor further agrees to provide certification at least annually that the Institutional Review Board has reviewed and approved the procedures, which involve human subjects in accordance with 45 CFR Part 46 and the Assurance of Compliance.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(c) If at any time during the performance of this contract, the Contracting officer determines, in consultation with the OPRR, NIH, that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) and (b) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved Health and Human Services Human Subject Assurances.

(End of clause)

352.270–9 Care of laboratory animals.

(a) The following provision shall be included in solicitations expected to involve vertebrate animals:

Notice to Offerors of Requirement for Adequate Assurance of Protection of Vertebrate Animal Subjects (Sep 1985)

The PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions establishes a number of requirements for research activities involving animals. Before a PHS award may be made to an applicant organization, the organization shall file, with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), PHS, a written Animal Welfare Assurance which commits the organization to comply with the provisions of the PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions, the Animal Welfare Act, and the Guide for the Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources. In accordance with the PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions, applicant organizations must establish a committee, qualified through the experience and expertise of its members, to oversee the institution's animal program, facilities and procedures. No PHS award involving the use of animals shall be made unless the Animal Welfare Assurance has been approved by OPRR. Prior to award, the Contracting Officer will notify Contractor(s) selected for projects that involve live vertebrate animals that an Animal Welfare Assurance is required. The Contracting Officer will request that OPRR negotiate an acceptable Animal Welfare Assurance with those Contractor(s). For further information, OPRR may be contacted at NIH, Bethesda, Maryland 20892 (301–496–7041).

(End of provision)

(b) The following clause shall be included in all solicitations and resultant contracts involving research on vertebrate animals:

Care of Live Vertebrate Animals (Jan 1999)

(a) Before undertaking performance of any contract involving animal related activities, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2316 and 9 CFR sections 2.25 through 2.28. The Contractor shall furnish evidence of the registration to the Contracting Officer.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR Sections 2.1–2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of any live vertebrate animals used or intended for use in the performance of this contract will conform with the PHS Policy on Humane Care of Use of Laboratory Animals, the current Animal Welfare Assurance, the Guide for the Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources and the pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR Subchapter A, Parts 1–3). In case of conflict between standards, the more stringent standard shall be used.

(d) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements and/or standards stated in paragraphs (a) through (c) above, the Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract until the Contractor corrects the noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract in whole or in part, and the Contractor's name may be removed from the list of those contractors with approved PHS Animal Welfare Assurances.

Note: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

(End of Clause)

Part 353—FORMS

Subpart 353.3—Illustrations of Forms

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 353.3—Illustrations of Forms

353.370–674 Form HHS 674, Structured Approach Profit/Fee Objective.

This form is available through local cost advisory personnel. For copies of the form, contact the Program Support Center at (301) 443–6740.

PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities

Sec.

370.101 Policy.

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370.201 Statutory requirements.

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370.205 Tribal preference requirements.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 370.1—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

370.101 Policy.

(a) It is the policy of HHS that all meetings, conferences, and seminars be accessible to persons with disabilities. For the purpose of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to acquisition, the policy is applicable to all contracts where the statement of work requires the contractor to conduct meetings, conferences, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

370.102 Responsibilities.

(a) The contracting officer shall include the clause in 352.270–1 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with 370.101(b).

(b) The project officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause in 352.270–1. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The project officer, prior to approving the plan, should consult with the Office of Engineering Services serving the region where the meeting, conference, or seminar is to be held, to assure that the contractor's plan meets the accessibility requirements of the contract clause. The Office of Engineering Services should determine the adequacy of the contractor's plan, and notify the project officer, in writing, within ten (10) working days of receiving the request from the project officer.

Subpart 370.2—Indian Preference in Employment, Training, and Subcontracting Opportunities

370.201 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b), requires:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible:
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

370.202 Applicability.

The Indian Preference clause set forth in 352.270–2 and the Indian Preference Program clause set forth in 352.270–3 have been developed to implement section 7(b) of Public Law 93-638 for all activities of the Department. The clauses shall be used by any affected departmental contracting activity as follows, except solicitations issued and contracts awarded pursuant to Title I of Public Law 93–638 (25 U.S.C. 450 *et seq.*) are exempted:

(c) The Indian Preference clause (352.270–2) shall be included in each solicitation and resultant contract, regardless of dollar amount:

(1) When the contract is to be awarded pursuant to an act specifically authorizing contracts with Indian organizations; or

(2) Where the work to be performed under the contract is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The Indian Preference Program clause (352.270–3) shall be included in each solicitation and resultant contract when:

(1) The dollar amount of the acquisition is expected to equal or exceed $50,000 for nonconstruction work or $100,000 for construction work;

(2) The Indian Preference clause is to be included in the solicitation and resultant contract; and

(3) The determination is made, prior to solicitation, that the work to be performed under the resultant contract will take place in whole or in substantial part on or near an Indian reservation(s). In addition, the Indian Preference Program clause may be included in any solicitation and resultant contract below the $50,000 or $100,000 level for nonconstruction or construction contracts, respectively, but which meet the requirements of paragraphs (b)(2) and (3) of this 370.202, and, in the opinion of the contracting activity, offer substantial opportunities for Indian employment, training, and subcontracting.

370.203 Definitions.

For purposes of this subpart 370.2, the following definitions shall apply:

(a) *Indian* means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual to provide evidence within thirty (30) days from the Tribe concerned that the person is a member of the Tribe.

(b) *Indian Tribe* means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(c) *Indian organization* means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. 1451).

(d) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and the ownership shall encompass active *operation* and *control* of the enterprise.

(e) *Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations

under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 *et seq.*)

(f) *On or near an Indian Reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.

370.204 Compliance enforcement.

(a) The concerned contracting activity shall be responsible for conducting periodic reviews to insure contractor compliance with the requirements of the clauses set forth in 352.270–2 and 352.270–3. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncomplaince with the requirements of the clauses set forth in 352.270–2 and 352.270–3 which are filed in writing with the contracting activity shall be promptly investigated and resolved by the contracting officer.

370.205 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the contracting activity may supplement the clause set forth in 352.270–3 by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the contracting activity and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93–638 and must be approved by the affected program director and approved for legal sufficiency by the Business and Administrative Law Division, OGC, or a regional attorney before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause in 352.270–3 shall be included in the solicitation and clearly identified in order to insure uniform understanding or the additional requirements by all prospective bidders or offerors.

(b) Nothing in this part shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this Subpart 370.2, and must not conflict with any Federal statutory or regulatory requirement concerning the award and administration of contracts.

Subpart 370.3—Acquisitions Involving Human Subjects

370.300 Scope of subpart.

This subpart applies to all research and development activities involving human subjects conducted under contract (see 45 CFR 46.102(d) and (f)).

370.301 Policy.

It is the policy of the Department of Health and Human Services (DHHS) that no contract involving human subjects shall be awarded until acceptable assurance has been given that the activity will be subject to initial and continuing review by an appropriate Institutional Review Board (IRB) as described in DHHS regulations at 45 CFR 46.103. An applicable Multiple Project Assurance (MPA) or Single Project Assurance (SPA), approved by the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), shall be required of each contractor, subcontractor, or cooperating institution having responsibility for human subjects involved in performance of the contract. The OPRR, NIH, is responsible for negotiating assurances covering all DHHS-supported or DHHS-conducted activities involving human subjects. Contracting officers shall be guided by OPRR regarding nonaward or termination of a contract due to inadequate assurance or breech of assurance for protection of human subjects.

370.302 Types of assurances.

Assurances may be one of two types:

(a) *Multiple Project Assurance (MPA).* An MPA describes the oversight procedures applicable to all DHHS-supported human subjects activities within an institution having a significant number of concurrent projects. An MPA listed in OPRR's current ''List of Institutions Which Have an Approved MPA'' will be considered acceptable for purposes of this policy.

(b) *Single Project Assurance (SPA).* An SPA describes the oversight procedures applicable to a single DHHS-supported human subjects activity. SPAs may be approved in modified form to meet unusual requirements. SPAs are not solicited from institutions with OPRR approved MPAs. Copies of proposals selected for negotiation and requiring one or more SPAs shall be forwarded to the Human Subjects Assurance Branch, OPRR, NIH MSC 7507, 6100 Executive Blvd., Room 3B01, Rockville, Maryland 20892, as early as possible so that timely action may be taken to secure the SPA(s).

370.303 Notice to offerors.

(a) Solicitations shall contain the notice to offerors in 352.270–8(a) whenever contract performance is expected to involve human subjects.

(b) IRB approval of proposals submitted by institutions having an OPRR-approved MPA should be certified in the manner required by instructions for completion of the contract proposal; or by completion of a DHHS Form 310, Protection of Human Subjects Assurance Identification/Certification/Declaration; or by letter indicating the institution's OPRR-assigned MPA number, the date of IRB review and approval, and the type of review (convened or expedited). The date of IRB approval must not be more than 12 months prior to the deadline for proposal submission.

(c) SPAs for contractors, subcontractors, or cooperating institutions generally will not be requested prior to determination that a contract proposal has been selected for negotiation. When an SPA is submitted, it provides certification for the initial contract period. No additional documentation is required. If the contract provides for additional years to complete the project, the noncompetitive renewal proposal shall be certified in the manner described in the preceding paragraph.

370.304 Contract clause.

The clause set forth in 352.270–8(b) shall be inserted in all solicitations and resultant contracts involving human subjects.

Subpart 370.4—Acquisitions Involving the Use of Laboratory Animals

370.400 Scope of subpart.

This subpart applies to all research, research training and biological testing activities involving live vertebrate animals conducted under contract (see Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), Rev. 1986, Repr. 1996).

370.401 Policy.

(a) It is the policy of the Department of Health and Human Services (DHHS) and the Public Health Service agencies that no contract involving live vertebrate animals shall be awarded until acceptable assurance has been given that the activity will be subject to initial and continuing review by an appropriate Institutional Animal Care and Use Committee (IACUC) as described in the PHS Policy at IV. B. 6.

and 7. An applicable Full Animal Welfare Assurance or Interinstitutional Agreement/Assurance, approved by the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), shall be required of each contractor, subcontractor, or cooperating institution having responsibility for animal care and use involved in performance of the contract (see PHS Policy II., IV. A., And V. B.).

(b) The OPRR, NIH, is responsible for negotiating assurances covering all DHHS/PHS-supported or DHHS/PHS-conducted activities involving the care and use of live vertebrate animals. Contracting officers shall be guided by OPRR regarding adequate animal care, and use, approval, disapproval, restriction, or withdrawal of approval of assurances (see PHS Policy V. A.).

370.402 Assurances.

(a) Assurances may be one of two types:

(1) *Full Animal Welfare Assurance (AWA).* An AWA describes the institution's complete program for the care and use of animals, including but not limited to the facilities, occupational health, training, veterinary care, IACUC procedures and lines of authority and responsibility. An AWA listed in OPRR's list of institutions which have an approved full AWA will be considered acceptable for purposes of this policy.

(2) *Interinstitutional Agreement/ Assurance (IAA).* An IAA describes the arrangements between an offeror and usually a subcontractor where animal activities will occur. An IAA is limited to the specific award or single project.

(b) Copies of proposals selected for negotiation and requiring an assurance shall be forwarded to the Assurance Branch, Division of Animal Welfare, OPRR, NIH MSC 7507, 6100 Executive Blvd., Room 3B01, Rockville, Maryland 20892, as early as possible in order that timely action may be taken to secure the necessary assurances.

(c) A contractor providing animal care services at an assured entity, such as a Government-owned, contractor-operated (GOCO) site, does not need a separate assurance because the GOCO site normally covers the contractor services in the GOCO site assurance.

370.403 Notice to offerors.

Solicitations shall contain the notice to offerors in 352.270–9(a) whenever contract performance is expected to involve the use of live vertebrate animals.

(a) For offerors having a full AWA on file with OPRR, IACUC approval of the use of animals shall be submitted in the manner required by instructions for completion of the contract proposal, but prior to the technical review of the proposal.

Note: The date of IACUC review and approval must not be more than 36 months prior to the deadline for proposal submission.

(b) Non-assured offerors are not required to submit assurances or IACUC approval with proposals. OPRR will contact contractors, subcontractors and cooperating institutions to negotiate necessary assurances and verify IACUC approvals when requested by appropriate DHHS/PHS staff.

370.404 Contract clause.

The clause set forth in 352.270–9(b) shall be included in all solicitations and resultant contracts involving the care and use of live vertebrate animals.

Subpart 370.5—Acquisitions Under the Buy Indian Act

370.500 Scope of subpart.

This subpart sets forth the policy on preferential acquisition from Indians under the negotiation authority of the Buy Indian Act. Applicability of this subpart is limited to acquisitions made by or on behalf of the Indian Health Service of the Public Health Service.

370.501 Policy.

(a) The Indian Health Service will utilize the negotiation authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861, and prescribes the application of the advertising requirements of section 3709 of the Revised Statutes to the acquisition of Indian supplies. As set out in 25 U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

(b) The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health, Education, and Welfare, on July 1, 1955 by Pub. L. 568, 83rd Congress, 42 U.S.C. 2001 *et seq.* Accordingly, the Secretary of Health and Human Services is authorized to use the Buy Indian Act in the acquisition of products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component (unless that component is making an acquisition on behalf of the Indian Health Service).

(c) Use of the Buy Indian Act negotiation authority has been emphasized in subsequent legislation, particularly Pub. L. 94–437 and Pub. L. 96–537.

370.502 Definitions.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service.

Indian means a member of any tribe, pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making determinations may take into account the determination of the tribe with which affiliation is claimed.

Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94–437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians (see 370.503(a)).

Product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application of skills by them.

370.503 Requirements.

(a) *Indian ownership.* The degree of Indian ownership of an Indian firm shall be at least 51 percent during the period covered by a Buy Indian contract.

(b) *Joint ventures.* An Indian firm may enter into a joint venture with other entities for specific projects as long as the Indian firm is the managing partner. However, the joint venture must be approved by the contracting officer prior to the award of a contract under the Buy Indian Act.

(c) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and FAR Part 28. In the case of contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe, bonds are not required. However, bonds are required when dealing with private business entities which are owned by an Indian tribe or members of an Indian tribe. Bonds may be required of private business entities which are joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(d) *Indian preference in employment, training and subcontracting.* Contracts awarded under the Buy Indian Act are subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), which requires that preference be given to Indians in employment, training, and subcontracting. The Indian Preference clause set forth in 352.270–2 shall be included in all Buy Indian solicitations and resultant contracts. The Indian Preference Program clause set forth in 352.270–3 shall be used as specified in 370.202(b). All requirements set forth in Subpart 370.2 which are applicable to the instant Buy Indian acquisition shall be followed by the contracting officer, e.g., sections 370.204 and 370.205.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract awarded pursuant to the Buy Indian Act shall be subcontracted to other than Indian firms. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment.

(f) *Wage rates.* A determination of the minimum wage rates by the Secretary of Labor as required by the Davis-Bacon Act (40 U.S.C. 276a–5) shall be included in all contracts awarded under the Buy Indian Act for over $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works, except contracts with Indian tribes or public nonprofit organizations serving as governmental instrumentalities of an Indian tribe. The wage rate determination is to be included in contracts with private business entities even if they are owned by an Indian tribe or a member of an Indian tribe and in connection with joint ventures with, or subcontractors of, an Indian tribe or a public nonprofit organization serving as a governmental instrumentality of an Indian tribe.

370–504 Competition.

(a) Contracts to be awarded under the Buy Indian Act shall be subject to competition among Indians or Indian concerns to the maximum extent that competition is determined by the contracting officer to be practicable. When competition is determined not to be practicable, a Justification for Other than Full and Open Competition shall be prepared in accordance with 306.303 and subsequently retained in the contract file.

(b) Solicitations must be synopsized and publicized in the Commerce Business Daily and copies of the synopses sent to the tribal office of the Indian tribal government directly concerned with the proposed acquisition as well as to Indian concerns and others having a legitimate interest. The synopsis should state that the acquisition is restricted to Indian firms under the Buy Indian Act.

370.505 Responsibility determinations.

(a) A contract may be awarded under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under that contract and the project or function is likely to be properly completed or maintained under that contract.

(b) The determination called for by paragraph (a) of this section, to be made prior to the award of a contract, will be made in writing by the contracting officer reflecting an analysis of the standards set forth in FAR 9.104–1.

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Friday
January 8, 1999

Part V

Postal Rate Commission

39 CFR Part 3001

Amendments to Domestic Mail Classification Schedule; Final Rule

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM99–1, R97–1; Order No. 1225]

Amendments to Domestic Mail Classification Schedule

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This document sets forth the changes to the Domestic Mail Classification Schedule (DMCS) as a result of recent Governors' action on recommended decisions of the Postal Rate Commission in Docket No. R97–1. The changes affect classification and fee provisions for postal services.

DATES: This rule is effective January 10, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: In response to a formal request from the Postal Service for recommendations on changes in postal rates, fees, and classifications, the Commission established Docket No. R97–1. Notice of the docket was published at 62 FR 39660 (July 23, 1997). The docket culminated in action of the Governors of the Postal Service on recommendations set forth in the PRC's May 11, 1998 initial decision and a September 24, 1998 further decision upon reconsideration of several matters. The decisions of the Commission and the Governors are available for review at the Commission's docket section. They also can be accessed electronically via the Commission's website at www.prc.gov.

The culmination of Docket No. R97–1 entails extensive changes in the domestic mail classification schedule. This schedule includes legal descriptions of the Service's offerings and rates and schedules. The accompanying material presents these changes. It also reflects minor editorial and conforming technical changes required for consistency, clarity or similar reasons. Consistent with past Commission practice, specific rates and fees are not shown in the rate schedules.

Dated: January 4, 1999.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Postal Rate Commission amends 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662.

2. Amend Appendix A to Subpart C—Postal Service Rates and Changes as follows:

a. Amend the Table of Contents by revising section 222 to read ''Cards Subclass'; by revising section 223 to read ''Priority Mail Subclass'; by revising section 362 to read ''Parcel Post, Bound Printed Matter, Special, and Library Subclasses''; and by revising section 382 to read ''Special and Library Subclasses''.

b. Amend the Table of Contents by removing Classification Schedules SS–1—Address Correction Service through SS–22—Shipper-Paid Forwarding and adding Classification Schedule 900—Special Services as set forth below.

c. Revise the table in section 160 to read as set forth below.

d. Revise section 221.21 to read as set forth below.

e. In section 221.22, in the first sentence of the introductory text, remove the term ''Presort'' and add in its place the term ''presort'.

f. Redesignate sections 221.24 and 221.25 as sections 221.26 and 221.27, respectively.

g. Add new section 221.24 to read as set forth below.

h. Add and reserve new section 221.25.

i. Revise the heading of section 222 to read ''Cards Subclass.''

j. Remove section 222.11 and redesignate sections 222.12 and 222.13 as 222.11 and 222.12 respectively.

k. Revise newly designated sections 222.11 and 222.12 to read as set forth below.

l. Revise section 222.31 to read as set forth below.

m. In the introductory text to sections 222.32 and 222.41, remove the phrase ''Stamped Cards and Post''.

n. Add and reserve section 222.33.

o. Add section 222.34 to read as set forth below.

p. Revise the heading of section 223 to read ''Priority Mail Subclass''.

q. Revise section 223.2 to read as set forth below.

r. Remove and reserve section 223.3.

s. In sections 240 and 280, remove the phrase ''single piece'' and add in its place the term ''single-piece'' each time it appears.

t. Revise the table in section 260 to read as set forth below.

u. Revise section 270 and add sections 271 and 272 to read as set forth below.

v. In section 280 remove the term ''Rate'' before ''Schedule''.

w. In section 311(b), remove the parenthetical phrase and add in its place ''(The transient rate applied to individual copies of second-class mail (currently Periodicals class mail) forwarded and mailed by the public, as well as to certain sample copies mailed by publishers.)''

x. Remove and reserve section 321.1 and remove references to this section in sections 321.21, 321.31, 321.41, and 321.51.

y. Add section 321.25 to read as set forth below.

z. Add section 321.37 to read as set forth below.

aa. In the second sentence of section 321.412, remove the term ''special'' and add in its place the term ''nonprofit''.

bb. Add section 321.45 to read as set forth below.

cc. Add section 321.57 to read as set forth below.

dd. Revise sections 322.12, 322.13, 322.14, and 322.15 to read as set forth below. Section 400.0202 which immediately follows section 322.13 is removed.

ee. Redesignate sections 322.16 and 322.17 as 322.17 and 322.18 respectively.

ff. Add section 322.16 to read as set forth below.

gg. Revise newly redesignated section 322.17 to read as set forth below.

hh. In the first sentence of section 322.34 add the term ''presort'' between the terms ''route'' and ''rate''.

ii. Add section 322.35 to read as set forth below.

jj. In section 323.11 (a) and (e), in the last sentence, remove the term ''The'' and add in its place the term ''These''; remove the phrase ''permitted in this subsection'' each time it appears.

kk. In section 323.14 add an ''s'' to the term ''mailing''.

ll. Add section 323.15 to read as set forth below.

mm. In sections 323.211(a)–(c) remove the term ''subsection'' and add in its place the term ''section'' each time it appears.

nn. In the introductory text of section 323.213, remove the phrase ''section 323.211a'' and add in its place the phrase ''subsection a of section 323.211''.

oo. In the introductory text of section 323.214 remove the phrase ''section 323.211b'' and add in its place the phrase ''subsection b of section 323.211''; in subsection e remove the phrase ''section 323.214 a through d'' and add in its place the phrase ''subsections a through d of section 323.214''.

pp. In section 323.215, the second sentence, remove the phrase ''section 323.211c'' and add in its place the phrase ''subsection c of section 323.211''.

qq. Revise section 323.22 to read as set forth below.

rr. Add sections 323.23, 323.24 and 323.25 to read as set forth below.

ss. In section 331 add the phrase ''Except as provided in section 322.161,'' at the beginning of the section, before the phrase ''Standard Mail''.

tt. Remove section 333.

uu. In section 341, the second sentence, remove the phrase ''Single Piece,''.

vv. In section 344.1 in the heading, remove the phrase ''Single Piece,''.

ww. In section 344.12 remove the phrase ''section 210 b through d'' and add in its place the phrase ''subsections b through d of section 210''.

xx. In section 344.21 remove the phrase ''Single Piece,''.

yy. In section 344.22 remove the phrase ''section 323.11 a and e,'' and add in its place the phrase ''subsections a and e of section 323.11''.

zz. In section 344.23 remove the phrase ''section 210, b through d'' and add in its place the phrase ''subsections b through d of section 210''.

aaa. Revise section 353.1 to read as set forth below.

bbb. Amend section 353.2 by revising the last sentence to read as set forth below.

ccc. In section 361, in the table under the column ''schedule'', remove the designations SS–1 and SS–4 and add in their place the designations 911 and 947, respectively; in the text following the table, remove the term ''by'' and add in its place the term ''with''.

ddd. Revise section 362 as set forth below.

eee. In the table in section 363 remove the designations ''SS–21'' and ''SS–22'' and add in their place the designations ''935'' and ''936'', respectively.

fff. Revise section 370 to read as set forth below.

ggg. In sections 381, 383 and 484 remove the term ''Rate'' before the term ''Schedule''.

hhh. Revise section 382 to read as set forth below.

iii. In section 383 add the phrase, ''Destination SCF or Destination Delivery Unit'' after the phrase ''Destination BMC''.

jjj. In section 411.1 remove the term ''of'' after the term ''all''.

kkk. In section 421.31 remove the designations ''421.32 or 421.33'' and add in their place the designations ''421.32, 421.33, or 421.34''.

lll. Revise section 421.32 to read as set forth below.

mmm. Redesignate section 421.33 as section 421.34 and add section 421.33 to read as set forth below.

nnn. In sections 421.41 and 421.42 remove the term ''and'' after the designation 421.31 and add in its place the punctuation mark for a comma; add the designations '', and 421.33'' following the designation ''421.32''.

ooo. In section 421.43 and 421.44 remove the designation ''421.33'' and replace it with the designation ''421.34''.

ppp. In section 423.21(b) remove the term ''of'' after the term ''one-half''.

qqq. In section 423.71 remove the designations ''423.72 or 423.73'' and add in their place the designations ''423.72, 423.73, or 423.74''.

rrr. Revise section 423.72 to read as set forth below.

sss. Redesignate section 423.73 as section 423.74 and add section 423.73 as set forth below.

ttt. In sections 423.81 and 423.82 remove the designations ''423.71 and 423.72'' and add in their place the designations ''423.71, 423.72, and 423.73''.

uuu. Revise section 423.83 to read as set forth below.

vvv. In section 423.84 remove the designation ''423.73'' and add in its place the designation ''423.74''; remove the phrase ''walk sequence'' and add in its place the term ''walk-sequence''.

www. Revise sections 441 and 442 to read as set forth below.

xxx. In section 443.1, in the first parenthetical phrase, remove the phrase ''Single Piece,''; and remove the term ''or'' and add the phrase ''or Nonprofit Enhanced Carrier Route'' after the word ''Nonprofit''.

yyy. In section 443.2, remove the phrase ''sections 210 b through d'' and add in its place the phrase ''subsections b through d of section 210''.

zzz. In section 453, in the third sentence, remove the term ''Standard'' and add in its place the term ''First-Class''.

aaaa. Add sections 910 through 971 to read as set forth below.

bbbb. In section 1003.3, remove the phrase ''he is required to pay to acquit himself'' and add in its place the phrase ''required for acquittal''.

cccc. In section 1009, the fourth sentence of the introductory text, in the second sentence of subsection (d), and in the introductory text to subsection (h) remove the term ''which'' and add in its place the term ''that''; in the introductory text of subsection (h) remove the term ''of''.

dddd. In section 2010(a) and (d) remove the designation ''SS–10'' and add in its place the designation ''921''; in the same subsections, remove the term ''Rate'' and add in its place the term ''Fee''.

eeee. In section 2025(a) remove the phrase ''change of address'' and add in its place the phrase ''change-of-address''.

ffff. In section 2027 remove the term ''address'' and add in its place the term ''delivery''.

gggg. In section 2031, remove the phrase ''mail piece'' and add in its place the term ''mailpiece''; and remove the phrase ''change of address'' and add in its place the phrase ''change-of-address''.

hhhh. Revise section 2033 to read as set forth below.

iiii. Revise subsection 3010(d) to read as set forth below.

jjjj. In section 3040 remove the term ''by'' and add in its place the term ''with''; add the term ''indicia'' after the term ''meter''.

kkkk. In section 3050, in the first sentence, remove the term ''Rate'' before the term ''Schedule''; in the third sentence remove the term ''Rate'' before the term ''Schedule'' and add in its place the term ''Fee''; remove the designation ''SS–12'' and add in its place the designation ''933''.

llll. In section 3080, the second sentence, remove the term ''later'' and add the phrase ''after acceptance'' after the term ''mailer''.

mmmm. In section 3090 remove the term ''minimum-per-piece'' and add in its place the phrase ''minimum per piece''.

nnnn. In section 4052, in the first sentence, remove the first ''which'' and add in its place the term ''that''; remove the second ''which''; and remove the phrase ''armed forces'' and add in its place the phrase ''Armed Forces'' each time it appears.

oooo. In section 6030 add the phrase ''or subclass'' after the term ''class''; add ''322.16,'' after ''230''.

pppp. Remove Classification Schedules SS–1 through SS–22 which follow immediately after section 6030.

qqqq. Revise the section ''Rate Schedules'' to read as set forth below.

rrrr. Remove the tables for schedules SS–1 through SS–1000 at the end of the Appendix.

ssss. In sections 110, 122.1 and 445 remove the phrase ''in accordance with'' and add in its place the term ''under''.

tttt. In sections 221.1, 221.31 introductory text, and 223.1(a) remove the number ''11'' and add in its place ''13''.

uuuu. In sections 240, 342 and 343 remove the term ''ascertaining'' and add in its place the term ''determining''.

vvvv. In sections 322.32 and 323.12 in the heading remove the phrase ''Single Piece'' and add in its place the term ''Single-Piece''; in the text remove the phrase ''single piece'' and add in its place the term ''single-piece''.

wwww. In sections 222.2 and 323.11 (a) and (e) remove the phrase ''post card'' and add in its place the term ''postcard''.

xxxx. Remove the term ''prescribed'' wherever it appears and add in its place the term ''specified'' in sections 122.3, 123.1, 123.2, 154, 181, 182.3(a) and (b), 182.4(a) and (b), 221.22(b), 221.31(c), 221.33, 221.34, 221.35, 222.2, 222.32(b) and (c), 222.41(c) and (d), 222.43, 222.44, 222.45, 223.6, 321.221(b) and (c), 321.223, 321.231(b)–(d), 321.233, 321.234, 321.236, 321.24, 321.31(b)–(e), 321.33, 321.34, 321.35, 321.36, 321.421(b) and (c), 321.423, 321.431(b)–(d), 321.433, 321.434, 321.436, 321.44, 321.51(b)–(e), 321.53, 321.54, 321.55, 321.56, newly designated 322.18, 322.33, 322.34, 323.13, 323.14, 323.211, 342, 344.11, 344.21, 344.22, 353.2, 421.1(a) and (b), newly designated 421.34, 421.41, 421.42, 421.43, 421.44, newly designated 423.74, 423.81, 423.82, 423.84, 443.1, 446, 453, 3030, 3040, 3060, 5020.

Appendix A to Subpart C—Postal Service Rates and Charges

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Classification Schedule 900—Special Services

Sec.
910 Addressing
911 Address Correction Service
912 Mailing List Services
920 Delivery Alternatives
921 Post Office Box and Caller Service
930 Payment Alternatives
931 Business Reply Mail
932 Merchandise Return Service
933 On-Site Meter Setting
934 Reserved
935 Bulk Parcel Return Service
936 Shipper-Paid Forwarding
940 Accountability & Receipts
941 Certified Mail
942 Registered Mail
943 Insurance
944 Collect on Delivery
945 Return Receipt
946 Restricted Delivery
947 Certificate of Mailing
948 Delivery Confirmation
950 Parcel Handling
951 Parcel Airlift (PAL)
952 Special Handling
960 Stamped Paper
961 Stamped Envelopes
962 Stamped Cards
970 Postal Money Orders
971 Domestic Postal Money Orders

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160 Ancillary Services

* * * * *

Service	Schedule
a. Address correction	911
b. Return receipts	945
c. COD	944
d. Express Mail Insurance	943

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221.21 Single-Piece Rate Category. The single-piece rate category applies to regular rate Letters and Sealed Parcels subclass mail not mailed under section 221.22 or 221.24.

* * * * *

221.24 Qualified Business Reply Mail Rate Category. The qualified business reply mail rate category applies to Letters and Sealed Parcels subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the letter machinability and other preparation requirements specified by the Postal Service.

* * * * *

222.11 Cards. The Cards subclass consists of Stamped Cards, defined in section 962.11, and postcards. A postcard is a privately printed mailing card for the transmission of messages. To be eligible to be mailed as a First-Class postcard, a card must be of uniform thickness and must not exceed any of the following dimensions:

a. 6 inches in length;

b. 4¼ inches in width;

c. 0.016 inch in thickness.

222.12 Double Cards. Double Stamped Cards or double postcards may be mailed as Stamped Cards or postcards. Double Stamped Cards are defined in section 962.12. A double postcard consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single postcard.

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222.31 Single-Piece Rate Category. The single-piece rate category applies to regular rate Cards subclass mail not mailed under section 222.32 or 222.34.

* * * * *

222.34 Qualified Business Reply Mail Rate Category. The qualified business reply mail rate category applies to Cards subclass mail that:

a. Is provided to senders by the recipient, an advance deposit account business reply mail permit holder, for return by mail to the recipient;

b. Bears the recipient's preprinted machine-readable return address, a barcode representing not more than 11 digits (not including ''correction'' digits), a Facing Identification Mark, and other markings specified and approved by the Postal Service; and

c. Meets the card machinability and other preparation requirements specified by the Postal Service.

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223.2 Single-Piece Priority Mail Rate Category. The single-piece Priority Mail rate category applies to Priority Mail subclass mail not mailed under section 223.4.

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260 Ancillary Services

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Service	Schedule
a. Address correction	911
b. Business reply mail	931
c. Certificates of mailing	947
d. Certified mail	941
e. COD	944
f. Insurance	943
g. Registered mail	942
h. Return receipt (limited to merchandise sent by Priority Mail)	945
i. Merchandise return	932
j. Delivery Confirmation (limited to Priority Mail)	948

270 Rates and Fees

271 The rates for First-Class Mail are set forth in the following schedules:

	Schedule
a. Letters and Sealed Parcels	221
b. Cards	222
c. Priority Mail	223

272 Keys and Identification Devices. Keys, identification cards, identification tags, or similar identification devices that:

a. Weigh no more than 2 pounds;

b. Are mailed without cover; and

c. Bear, contain, or have securely attached the name and address information, as specified by the Postal Service, of a person, organization, or concern, with instructions to return to the address and a statement guaranteeing the payment of postage due on delivery; are subject to the following rates and fees:

i. The applicable single-piece rates in schedules 221 or 223;

ii. The fee set forth in fee schedule 931 for payment of postage due charges

if an active business reply mail advance deposit account is not used, and

iii. If applicable, the surcharge for nonstandard size mail, as defined in section 232.

* * * * *

321.25 Residual Shape Surcharge. Regular subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

* * * * *

321.37 Residual Shape Surcharge. Enhanced Carrier Route subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

* * * * *

321.57 Residual Shape Surcharge. Nonprofit subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

* * * * *

322.12 Description of Rate Categories.

322.121 Inter-BMC Rate Category. The Inter-BMC rate category applies to all Parcel Post subclass mail not mailed under section 322.122, 322.123, 322.124, or 322.125.

322.122 Intra-BMC Rate Category. The Intra-BMC rate category applies to Parcel Post subclass mail originating and destinating within a designated BMC or auxiliary service facility service area, Alaska, Hawaii or Puerto Rico.

322.123 Destination Bulk Mail Center (DBMC) Rate Category. The destination bulk mail center rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces entered at a designated destination BMC, auxiliary service facility, or other equivalent facility, as specified by the Postal Service.

322.124 Destination Sectional Center Facility (DSCF) Rate Category. The destination sectional center facility rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces sorted to five-digit destination ZIP Codes as specified by the Postal Service and entered at a designated destination processing and distribution center or facility, or other equivalent facility, as specified by the Postal Service.

322.125 Destination Delivery Unit (DDU) Rate Category. The destination delivery unit rate category applies to Parcel Post subclass mail prepared as specified by the Postal Service in a mailing of at least 50 pieces, and entered at a designated destination delivery unit, or other equivalent facility, as specified by the Postal Service.

322.13 Bulk Parcel Post. Bulk Parcel Post mail is Parcel Post mail consisting of properly prepared and separated single mailings of at least 300 pieces or 2,000 pounds. Pieces weighing less than 15 pounds and measuring over 84 inches in length and girth combined or pieces measuring over 108 inches in length and girth combined are not mailable as Bulk Parcel Post mail.

322.131 Barcoded Discount. The barcoded discount applies to Bulk Parcel Post mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service, and meets all other preparation and machinability requirements of the Postal Service.

322.14 Bulk Mail Center (BMC) Presort Discounts.

322.141 BMC Presort Discount. The BMC presort discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of 50 or more pieces, entered at a facility authorized by the Postal Service, and sorted to destination BMCs, as specified by the Postal Service.

322.142 Origin Bulk Mail Center (OBMC) Discount. The origin bulk mail center discount applies to Inter-BMC Parcel Post subclass mail that is prepared as specified by the Postal Service in a mailing of at least 50 pieces, entered at the origin BMC, and sorted to destination BMCs, as specified by the Postal Service.

322.15 Barcoded Discount. The barcoded discount applies to Inter-BMC, Intra-BMC, and DBMC Parcel Post subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

322.16 Oversize Parcel Post.

322.161 Excessive Length and Girth. Parcel Post subclass mail pieces exceeding 108 inches in length and girth combined, but not greater than 130 inches in length and girth combined, are mailable.

322.162 Balloon Rate. Parcel Post subclass mail pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

322.17 Nonmachinable Surcharge. Inter-BMC Parcel Post subclass mail that does not meet machinability criteria specified by the Postal Service is subject to a nonmachinable surcharge.

* * * * *

322.35 Barcoded Discount. The barcoded discount applies to single-piece rate and bulk rate Bound Printed Matter subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

* * * * *

323.15 Barcoded Discount. The barcoded discount applies to single-piece rate and Level B presort rate Special subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

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323.22 Single-Piece Rate Category. The single-piece rate category applies to Library subclass mail not mailed under section 323.23 or 323.24.

323.23 Level A Presort Rate Category. The Level A presort rate category applies to mailing of at least 500 pieces of Library subclass mail, prepared and presorted to five-digit destination ZIP Codes as specified by the Postal Service.

323.24 Level B Presort Rate Category. The Level B presort rate category applies to mailing of at least 500 pieces of Library subclass mail, prepared and presorted to destination Bulk Mail Centers as specified by the Postal Service.

323.25 Barcoded Discount. The barcoded discount applies to Library subclass mail that is entered at designated facilities, bears a barcode specified by the Postal Service, is prepared as specified by the Postal Service in a mailing of at least 50 pieces, and meets all other preparation and machinability requirements of the Postal Service.

* * * * *

353.1 Regular, Enhanced Carrier Route, Nonprofit and Nonprofit Enhanced Carrier Route Subclasses (section 321)

Undeliverable-as-addressed Standard Mail mailed under section 321 will be returned on request of the mailer, or

forwarded and returned on request of the mailer. Undeliverable-as-addressed combined First-Class and Standard pieces will be returned as specified by the Postal Service. Except as provided in section 935, the applicable First-Class Mail rate is charged for each piece receiving return only service. Except as provided in section 936, charges for forwarding-and-return service are assessed only on those pieces which cannot be forwarded and are returned. Except as provided in sections 935 and 936, the charge for those returned pieces is the appropriate First-Class Mail rate for the piece plus that rate multiplied by a factor equal to the number of section 321 Standard pieces nationwide that are successfully forwarded for every one piece that cannot be forwarded and must be returned.

353.2 Parcel Post, Bound Printed Matter, Special, and Library Subclasses (sections 322 and 323)

* * * When Standard Mail mailed under sections 322 and 323 is forwarded or returned from one post office to another, additional charges will be based on the applicable single-piece Standard Mail rate under 322 or 323.

* * * * *

362 Parcel Post, Bound Printed Matter, Special, and Library Subclasses Parcel Post, Bound Printed Matter, Special, and Library subclass mail will receive the following additional services upon payment of the appropriate fees:

Service	Schedule
a. Certificates of mailing	947
b. COD	944
c. Insurance	943
d. Special handling	952
e. Return receipt (merchandise only)	945
f. Merchandise return	932
g. Delivery Confirmation	948

Insurance, special handling, and COD services may not be used selectively for individual pieces in a multi-piece Standard Mail mailing unless specific methods approved by the Postal Service for determining and verifying postage are followed.

370 Rates and Fees

The rates and fees for Standard Mail are set forth as follows:

	Schedule
a. Regular subclass	321.2
b. Enhanced Carrier Route subclass	321.3
c. Nonprofit subclass	321.4
d. Nonprofit Enhanced Carrier Route subclass	321.5
e. Parcel Post subclass:	
Inter-BMC	322.1A
Intra-BMC	322.1B
Destination BMC	322.1C
Destination SCF	322.1D
Destination Delivery Unit	322.1E
f. Bound Printed Matter subclass:	
Single-Piece	322.3A
Bulk and Carrier Route	322.3B
g. Special subclass	323.1
h. Library subclass	323.2
i. Fees	1000

* * * * *

382 Special and Library Subclasses

A presort mailing fee as set forth in Schedule 1000 must be paid once each year at each office of mailing by or for any person who mails presorted Special or Library subclass mail. Any person who engages a business concern or other individuals to mail presorted Special or Library subclass mail must pay the fee.

* * * * *

421.32 Three-Digit Rate Category. The three-digit rate category applies to Regular subclass mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

421.33 Five-Digit Rate Category. The five-digit rate category applies to Regular subclass mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

* * * * *

423.72 Three-Digit Rate Category. The three-digit rate category applies to Preferred Rate Periodicals entered under sections 423.2, 423.3, 423.4, or 423.5 that are presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

423.73 Five-Digit Rate Category. The five-digit category applies to Preferred Rate Periodicals entered under sections 423.2, 423.3, 423.4, or 423.5 that are presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

* * * * *

423.83 High Density Discount. The high density discount applies to Preferred Rate Periodicals mailed under section 423.74, presented in walk-sequence order, and meeting the high density and preparation requirements specified by the Postal Service, except that mailers of Within County mail may qualify for such discount also by presenting otherwise eligible mailings containing pieces addressed to a minimum of 25 percent of the addresses per carrier route.

* * * * *

441 Postage. Postage must be paid on Periodicals class mail as set forth in section 3000.

442 Presortation. Periodicals class mail must be presorted as specified by the Postal Service.

* * * * *

Special Services

910 Addressing

911 Address Correction Service

911.1 Definition.

911.11 Address correction service is a service which provides the mailer with a method of obtaining the correct address, if available to the Postal Service, of the addressee or the reason for nondelivery.

911.2 Description of Service.

911.21 Address correction service is available to mailers of postage prepaid mail of all classes. Periodicals class mail will receive address correction service.

911.22 Address correction service is not available for items addressed for delivery by military personnel at any military installation.

911.23 Address correction provides the following service to the mailer:

a. If the correct address is known to the Postal Service, the mailer is notified of both the old and the correct address.

b. If the item mailed cannot be delivered, the mailer will be notified of the reason for nondelivery.

911.3 Requirements of the Mailer.

911.31 Mail, other than Periodicals class mail, sent under this section must bear a request for address correction service.

911.4 Fees.

911.41 There is no charge for address correction service when the correction is provided incidental to the return of the mailpiece to the sender.

911.42 A fee, as set forth in Fee Schedule 911, is charged for all other forms of address correction service.

912 Mailing List Services

912.1 Definition.

912.11 Mailing list services include:

a. Correction of mailing lists;

b. Change-of-address information for election boards and registration commissions;

c. ZIP coding of mailing lists; and

d. Arrangement of address cards in the sequence of delivery.

912.12 Correction of mailing list service provides current information concerning name and address mailing lists or correct information concerning occupant mailing lists.

912.13 ZIP coding of mailing lists service is a service identifying ZIP Code addresses in areas served by multi-ZIP coded postal facilities.

912.2 Description of Service.

912.21 Correction of mailing list service is available only to the following owners of name and address or occupant mailing lists:

a. Members of Congress;

b. Federal agencies;

c. State government departments;

d. Municipalities;

e. Religious organizations;

f. Fraternal organizations;

g. Recognized charitable organizations;

h. Concerns or persons who solicit business by mail.

912.22 The following corrections will be made to name and address lists:

a. Names to which mail cannot be delivered or forwarded will be deleted;

b. Incorrect house, rural, or post office box numbers will be corrected;

c. When permanent forwarding orders are on file for customers who have moved, new addresses including ZIP Codes will be furnished;

d. New names will not be added to the list.

912.23 The following corrections will be made to occupant lists:

a. Numbers representing incorrect or non-existent street addresses will be deleted;

b. Business or rural route addresses will be distinguished if known;

c. Corrected cards or sheets will be grouped by route;

d. Street address numbers will not be added or changed.

912.24 Corrected lists will be returned to customers at no additional charge.

912.25 Residential change-of-address information is available only to election boards or registration commissions for obtaining, if known to the Postal Service, the current address of an addressee.

912.26 ZIP coding or mailing list service provides that addresses will be sorted to the finest possible ZIP Code sortation.

912.27 Gummed labels, wrappers, envelopes, Stamped Cards, or postcards indicative of one-time use will not be accepted as mailing lists.

912.28 Sequencing of address cards service provides for the removal of incorrect addresses, notation of missing addresses and addition of missing addresses.

912.3 Requirements of Customer.

912.31 A customer desiring correction of a mailing list or arrangement of address cards in sequence of carrier delivery must submit the list or cards as specified by the Postal Service.

912.4 Fees.

912.41 The fees for mailing list services are set forth in Fee Schedule 912.

920 Delivery Alternatives

921 Post Office Box and Caller Service

921.1 Caller Service.

921.11 Definition.

921.111 Caller service is a service which permits a customer to obtain mail addressed to the customer's box number through a call window or loading dock.

921.12 Description of Service.

921.121 Caller service uses post office box numbers as the address medium but does not actually use a post office box.

921.122 Caller service is not available at certain postal facilities.

921.123 Caller service is provided to customers on the basis of mail volume received and number of post office boxes used at any one facility.

921.124 A customer may reserve a caller number.

921.125 Caller service cannot be used when the sole purpose is, by subsequently filing change-of-address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

921.13 Fees.

921.131 Fees for caller service are set forth in Fee Schedule 921.

921.2 Post Office Box Service.

921.21 Definition.

921.211 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of mail during the hours when the lobby of a postal facility is open.

921.22 Description of Service.

921.221 The Postal Service may limit the number of post office boxes occupied by any one customer.

921.222 A post office boxholder may ask the Postal Service to deliver to the post office box all mail properly addressed to the holder. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, under existing regulations.

921.223 Post office box service cannot be used when the sole purpose is, by subsequently filing change-of-address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

921.23 Fees.

921.231 Fees for post office box service are set forth in Fee Schedule 921.

921.232 In postal facilities primarily serving academic institutions or the students of such institutions, fees for post office boxes are:

Period of box use	Fee
95 days or less	½ semiannual fee.
96 to 140 days	¾ semiannual fee.
141 to 190 days	Full semiannual fee.
191 to 230 days	1¼ semiannual fee.
231 to 270 days	1½ semiannual fee.
271 days to full year	Full annual fee.

921.233 No refunds will be made for post office box fees paid under section. 921.232. For purposes of this section, the full annual fee is twice the amount of the semi-annual fee.

930 Payment Alternatives

931 Business Reply Mail

931.1 Definitions.

931.11 Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12 A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation. This provision expires June 7, 1999.

931.2 Description of Service.

931.21 The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3 Requirements of the Mailer.

931.31 Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32 Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

931.4 Fees.

931.41 The fees for business reply mail are set forth in Fee Schedule 931.

931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.

931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

931.5 Experimental Reverse Manifest Fees.

931.51 A set-up/qualification fee as set forth in Fee Schedule 931 must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter-size business reply mail for which the postage and fees will be accounted for through a reverse manifest method approved by the Postal Service for determining and verifying postage. A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter-size business reply mail experiment is requested. This provision expires June 7, 1999.

931.52 A nonletter-size reverse manifest monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's reverse manifest account is active. This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the reverse manifest nonletter-size business reply mail experiment and which utilize reverse manifest accounting methods approved by the Postal Service for determining and verifying postage and fees. This provision expires June 7, 1999.

931.6 Experimental Weight Averaging Fees.

931.61 A set-up/qualification fee as set forth in Fee Schedule 931 must be paid by each business reply mail advance deposit trust account holder at each destination postal facility at which it applies to receive nonletter-size business reply mail for which the postage and fees will be accounted for through a weight averaging method approved by the Postal Service for determining and verifying postage. A distributor must pay this fee for each business reply mail advance deposit trust account for which participation in the nonletter-size business reply mail experiment is requested. This provision expires June 7, 1999.

931.62 A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active. This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment. This provision expires June 7, 1999.

931.7 Authorizations and Licenses.

931.71 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.

931.72 Except as provided in section 931.73, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

931.73 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.

931.74 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.

931.75 Authorization to pay experimental nonletter-size business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the applicable reverse manifest or weight averaging accounting method. This provision expires June 7, 1999.

932 Merchandise Return Service

932.1 Definition.

932.11 Merchandise return service provides a method whereby a shipper may authorize its customers to return a parcel with the postage paid by the shipper. A shipper is the holder of a merchandise return permit.

932.2 Description of Service.

932.21 Merchandise return service is available to all shippers who obtain the necessary permit and who guarantee payment of postage and fees for all returned parcels.

932.22 Merchandise return service is available for the return of any parcel under the following classification schedules:

a. First-Class Mail;

b. Standard Mail.

932.3 Requirements of the Mailer.

932.31 Merchandise return labels must be prepared at the shipper's expense to specifications set forth by the Postal Service.

932.32 The shipper must furnish its customer with an appropriate merchandise return label.

932.4 Other Services.

932.41 The following services may be purchased in conjunction with Merchandise Return Service:

Service	Fee schedule
a. Certificate of mailing	947
b. Insurance	943
c. Registered mail	942
d. Special handling	952

932.42 Only the shipper may purchase insurance service for the merchandise return parcel by indicating the amount of insurance on the merchandise return label before providing it to the customer. The customer who returns a parcel to the shipper under merchandise return service may not purchase insurance.

932.5 Fees.

932.51 The fee for the merchandise return service is set forth in Fee Schedule 932. This fee is paid by the shipper.

932.6 Authorizations and Licenses.

932.61 A permit fee as set forth in Schedule 1000 must be paid once each calendar year by shippers utilizing merchandise return service.

932.62 The merchandise return permit may be canceled for failure to maintain sufficient funds in a trust account to cover postage and fees on returned parcels or for distributing merchandise return labels that do not conform to Postal Service specifications.

933 On-Site Meter Setting

933.1 Definition.

933.11 On-site meter setting or examination service is a service whereby the Postal Service will service a postage meter at the mailer's or meter manufacturer's premises.

933.2 Description of Service.

933.21 On-site meter setting or examination service is available on a scheduled basis, and meter setting may be performed on an emergency basis for those customers enrolled in the scheduled on-site meter setting or examination program.

933.3 Fees.

933.31 The fees for on-site meter setting or examination service are set forth in Fee Schedule 933.

934 [Reserved]

935 Bulk Parcel Return Service

935.1 Definition.

935.11 Bulk Parcel Return Service provides a method whereby high-volume parcel mailers may have undeliverable-as-addressed machinable parcels returned to designated postal facilities for pickup by the mailer at a predetermined frequency specified by the Postal Service or delivered by the Postal Service in bulk in a manner and frequency specified by the Postal Service.

935.2 Description of Service.

935.21 Bulk Parcel Return Service is available only for the return of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

935.3 Requirements of the Mailer.

935.31 Mailers must receive authorization from the Postal Service to use Bulk Parcel Return Service.

935.32 To claim eligibility for Bulk Parcel Return Service at each facility through which the mailer requests Bulk Parcel Return Service, the mailer must demonstrate receipt of 10,000 returned machinable parcels at a given delivery point in the previous postal fiscal year or must demonstrate a high likelihood of receiving 10,000 returned parcels in the postal fiscal year for which the service is requested.

935.33 Payment for Bulk Parcel Return Service is made through advance deposit account, or as otherwise specified by the Postal Service.

935.34 Mail for which Bulk Parcel Return Service is requested must bear endorsements specified by the Postal Service.

935.35 Bulk Parcel Return Service mailers must meet the documentation and audit requirements of the Postal Service.

935.4 Other Services.

935.41 The following services may be purchased in conjunction with Bulk Parcel Return Service:

Service	Fee schedule
a. Address Correction Service	911
b. Certificate of Mailing	947
c. Shipper-Paid Forwarding	936

935.5 Fee.

935.51 The fee for Bulk Parcel Return Service is set forth in Fee Schedule 935.

935.6 Authorizations and Licenses.

935.61 A permit fee as set forth in Schedule 1000 must be paid once each calendar year by mailers utilizing Bulk Parcel Return Service.

935.62 The Bulk Parcel Return Service permit may be canceled for failure to maintain sufficient funds in an advance deposit account to cover postage and fees on returned parcels or for failure to meet the specifications of the Postal Service.

936 Shipper-Paid Forwarding

936.1 Definition.

936.11 Shipper-Paid Forwarding provides a method whereby mailers may have undeliverable-as-addressed machinable parcels forwarded at applicable First-Class Mail rates for up to one year from the date that the addressee filed a change-of-address order. If the parcel, for which Shipper-Paid Forwarding is elected, is returned, the mailer will pay the applicable First-Class Mail rate, or the Bulk Parcel Return Service fee, if that service was elected.

936.2 Description of Service.

936.21 Shipper-Paid Forwarding is available only for the forwarding of machinable parcels, as defined by the Postal Service, initially mailed under the following Standard Mail subclasses: Regular and Nonprofit.

936.3 Requirements of the Mailer.

936.31 Shipper-Paid Forwarding is available only in conjunction with automated Address Correction Service in section 911.

936.32 Mail for which Shipper-Paid Forwarding is purchased must meet the preparation requirements of the Postal Service.

936.33 Payment for Shipper-Paid Forwarding is made through advance deposit account, or as otherwise specified by the Postal Service.

936.34 Mail for which Shipper-Paid Forwarding is requested must bear endorsements specified by the Postal Service.

936.4 Other Services.

936.41 The following services may be purchased in conjunction with Shipper-Paid Forwarding:

Service	Fee schedule
a. Certificate of Mailing	947
b. Bulk Parcel Return Service	935

936.5 Applicable Rates.

936.51 Except as provided in section 935, single-piece rates under the Letters and Sealed Parcels subclass or the Priority Mail subclass of First-Class Mail, as set forth in Rate Schedules 221 and 223, apply to pieces forwarded or returned under this section.

940 Accountability & Receipts

941 Certified Mail

941.1 Definition.

941.11 Certified mail service is a service that provides a mailing receipt to the sender and a record of delivery at the office of delivery.

941.2 Description of Service.

941.21 Certified mail service is provided for matter mailed as First-Class Mail.

941.22 If requested by the mailer, the time of acceptance by the Postal Service will be indicated on the receipt.

941.23 A record of delivery is retained at the office of delivery for a specified period of time.

941.24 If the initial attempt to deliver the mail is not successful, a notice of attempted delivery is left at the mailing address.

941.25 A receipt of mailing may be obtained only if the article is mailed at a post office, branch or station, or given to a rural carrier.

941.26 Additional copies of the original mailing receipt may be obtained by the mailer.

941.3 Deposit of Mail.

941.31 Certified mail must be deposited in a manner specified by the Postal Service.

941.4 Other Services.

941.41 The following services may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. Restricted Delivery	946
b. Return Receipt	945

941.5 Fees.

941.51 The fees for certified mail service are set forth in Fee Schedule 941.

942 Registered Mail

942.1 Definition.

942.11 Registered mail is a service that provides added protection to mail sent under this section and indemnity in case of loss or damage.

942.2 Description of Service.

942.21 Registered mail service is available to mailers of prepaid mail sent as First-Class Mail except that registered mail must meet the minimum requirements for length and width regardless of thickness.

942.22 Registered mail service provides insurance up to a maximum of $25,000, depending upon the actual value at the time of mailing, except that insurance is not available for articles of no value.

942.23 There is no limit on the value of articles sent under this section.

942.24 Registered mail service is not available for:

a. All delivery points because of the high security required for registered mail; in addition, not all delivery points will be available for registry and liability is limited in some geographic areas;

b. Mail of any class sent in combination with First-Class Mail;

c. Two or more articles tied or fastened together, unless the envelopes are enclosed in the same envelope or container.

942.25 The following services are provided as part of registered mail

service at no additional cost to the mailer:

a. A receipt;

b. A record of delivery, retained by the Postal Service for a specified period of time;

c. A notice of attempted delivery will be left at the mailing address if the initial delivery attempt is unsuccessful;

d. When registered mail is undeliverable-as-addressed and cannot be forwarded, a notice of nondelivery is provided.

942.26 A claim for complete loss of insured articles may be filed by the mailer only. A claim for damage or for partial loss of insured articles may be filed by either the mailer or addressee.

942.27 Indemnity claims for registered mail must be filed within a period of time, specified by the Postal Service, from the date the article was mailed.

942.3 Deposit of Mail.

942.31 Registered mail must be deposited in a manner specified by the Postal Service.

942.4 Service.

942.41 Registered mail is provided maximum security.

942.5 Forwarding and Return.

942.51 Registered mail is forwarded and returned without additional registry charge.

942.6 Other Services.

942.61 The following services may be obtained in conjunction with mail sent under this section upon payment of applicable fees:

Service	Fee schedule
a. Collect on delivery	944
b. Restricted delivery	946
c. Return receipt	945
d. Merchandise return (shippers only)	932

942.7 Fees

942.71 The fees for registered mail are set forth in Fee Schedule 942.

943 Insurance

943.1 Express Mail Insurance.

943.11 Definition.

943.111 Express Mail Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to items sent by Express Mail.

943.12 Description of Service.

943.121 Express Mail Insurance is available only for Express Mail.

943.122 Insurance coverage is provided, for no additional charge, up to $500 per piece for document reconstruction, up to $5,000 per occurrence regardless of the number of claimants. Insurance coverage is also provided, for no additional charge, up to $500 per piece for merchandise. Insurance coverage for merchandise valued at more than $500 is available for an additional fee, as set forth in Fee Schedule 943. The maximum liability for merchandise is $5,000 per piece. For negotiable items, currency, or bullion, the maximum liability is $15.

943.123 Indemnity claims for Express Mail must be filed within a specified period of time from the date the article was mailed.

943.124 Indemnity will be paid under terms and conditions specified by the Postal Service.

943.125 Among other limitations specified by the Postal Service, indemnity will not be paid by the Postal Service for loss, damage or rifling:

a. Of nonmailable matter;

b. Due to improper packaging;

c. Due to seizure by any agency of government; or

d. Due to war, insurrection or civil disturbances.

943.13 Fees.

943.131 The fees for Express Mail Insurance service are set forth in Fee Schedule 943.

943.2 General Insurance.

943.21 Retail Insurance.

943.211 Retail Insurance is a service that provides the mailer with indemnity for loss of, rifling of, or damage to mailed items.

943.212 The maximum liability of the Postal Service for Retail Insurance is $5000.

943.213 Retail Insurance is available for mail sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail;

b. Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail.

943.214 Retail Insurance is not available for matter offered for sale, addressed to prospective purchasers who have not ordered or authorized their sending. If such matter is received in the mail, payment will not be made for loss, rifling, or damage.

943.215 For Retail Insurance, the mailer is issued a receipt for each item mailed. For items insured for more than $50, a receipt of delivery is obtained by the Postal Service.

943.216 For items insured for more than $50, a notice of attempted delivery is left at the mailing address when the first attempt at delivery is unsuccessful.

943.217 Retail insurance provides indemnity for the actual value of the article at the time of mailing.

943.22 Bulk Insurance.

943.221 Bulk Insurance service is available for mail entered in bulk at designated facilities and in a manner specified by the Postal Service, including the use of electronic manifesting, and sent under the following classification schedules:

a. First-Class Mail, if containing matter that may be mailed as Standard Mail;

b. Parcel Post, Bound Printed Matter, Special, and Library subclasses of Standard Mail.

943.222 Bulk Insurance bears endorsements and identifiers specified by the Postal Service. Bulk Insurance mailers must meet the documentation requirements of the Postal Service.

943.223 Bulk Insurance provides indemnity for the lesser of the actual value of the article at the time of mailing, or the wholesale cost of the contents to the sender.

943.23 Claims.

943.231 For Retail Insurance, a claim for complete loss may be filed by the mailer only, and a claim for damage or for partial loss may be filed by either the mailer or addressee. For Bulk Insurance, all claims must be filed by the mailer.

943.232 A claim for damage or loss on a parcel sent merchandise return under section 932 may be filed only by the purchaser of the insurance.

943.233 Indemnity claims must be filed within a specified period of time from the date the article was mailed.

943.24 Deposit of Mail.

943.241 Mail insured under section 943.2 must be deposited as specified by the Postal Service.

943.25 Forwarding and Return.

943.251 By insuring an item, the mailer guarantees forwarding and return postage unless instructions on the piece mailed indicate that it not be forwarded or returned.

943.252 Mail undeliverable as addressed will be returned to the sender as specified by the sender or by the Postal Service.

943.26 Other Services.

943.261 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. Parcel Airlift	951
b. Restricted delivery (for items insured for more than $50)	946
c. Return receipt (for items insured for more than $50)	945
d. Special handling	952
e. Merchandise return (shippers only)	932

943.27 Fees.

943.271 The fees for Insurance are set forth in Fee Schedule 943.

944 Collect on Delivery

944.1 Definition

944.11 Collect on Delivery (COD) service is a service that allows a mailer to mail an article for which full or partial payment has not yet been received and have the price, the cost of postage and fees, and anticipated or past due charges collected by the Postal Service from the addressee when the article is delivered.

944.2 Description of Service.

944.21 COD service is available for collection of $600 or less upon the delivery of postage prepaid mail sent under the following classification schedules:

a. Express Mail;

b. First-Class Mail;

c. Parcel Post; Bound Printed Matter, Special, and Library subclasses of Standard Mail.

944.22 Service under this section is not available for:

a. Collection agency purposes;

b. Return of merchandise about which some dissatisfaction has arisen, unless the new addressee has consented in advance to such return;

c. Sending only bills or statements of indebtedness, even though the sender may establish that the addressee has agreed to collection in this manner; however, when the legitimate COD shipment consisting of merchandise or bill of lading, is being mailed, the balance due on a past or anticipated transaction may be included in the charges on a COD article, provided the addressee has consented in advance to such action;

d. Parcels containing moving-picture films mailed by exhibitors to moving-picture manufacturers, distributors, or exchanges;

e. Goods that have not been ordered by the addressee.

944.23 COD service provides the mailer with insurance against loss, rifling and damage to the article as well as failure to receive the amount collected from the addressee. This provision insures only the receipt of the instrument issued to the mailer after payment of COD charges, and is not to be construed to make the Postal Service liable upon any such instrument other than a Postal Service money order.

944.24 A receipt is issued to the mailer for each piece of COD mail. Additional copies of the original mailing receipt may be obtained by the mailer.

944.25 Delivery of COD mail will be made in a manner specified by the Postal Service. If a delivery to the mailing address is not attempted or if a delivery attempt is unsuccessful, a notice of attempted delivery will be left at the mailing address.

944.26 The mailer may receive a notice of nondelivery if the piece mailed is endorsed appropriately.

944.27 The mailer may designate a new addressee or alter the COD charges by submitting the appropriate form and by paying the appropriate fee as set forth in Fee Schedule 944.

944.28 A claim for complete loss may be filed by the mailer only. A claim for damage or for partial loss may be filed by either the mailer or addressee.

944.29 COD indemnity claims must be filed within a specified period of time from the date the article was mailed.

944.3 Requirements of the Mailer.

944.31 COD mail must be identified as COD mail.

944.4 Deposit of Mail.

944.41 COD mail must be deposited in a manner specified by the Postal Service.

944.5 Forwarding and Return.

944.51 A mailer of COD mail guarantees to pay any return postage, unless otherwise specified on the piece mailed.

944.52 For COD mail sent as Standard Mail, postage at the applicable rate will be charged to the addressee:

a. When an addressee, entitled to delivery to the mailing address under Postal Service regulations, requests delivery of COD mail that was refused when first offered for delivery;

b. For each delivery attempt, to an addressee entitled to delivery to the mailing address under Postal Service regulations, after the second such attempt.

944.6 Other Services.

944.61 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fee:

Service	Fee schedule
a. Registered mail, if sent as First-Class	942
b. Restricted delivery	946
c. Special handling	952

944.7 Fees.

944.71 Fees for COD service are set forth in Fee Schedule 944.

945 Return Receipt

945.1 Definition.

945.11 Return receipt service is a service that provides evidence to the mailer that an article has been received at the delivery address.

945.2 Description of Service.

945.21 Return receipt service is available for mail sent under the following sections or classification schedules:

a. Certified mail	941
b. COD mail	944
c. Insurance (if insured for more than $50)	943
d. Registered mail	942
e. Delivery Confirmation	948
f. Express Mail.	
g. Priority Mail (merchandise only).	
h. Standard Mail (limited to merchandise sent by Parcel Post, Bound Printed Matter, Special, and Library subclasses).	

945.22 Return receipt service is available at the time of mailing or, when purchased in conjunction with certified mail, COD, Insurance (if for more than $50), registered mail, or Express Mail, after mailing.

945.23 Mailers requesting return receipt service at the time of mailing will be provided, as appropriate, the signature of the addressee or addressee's agent, the date delivered, and the address of delivery, if different from the address on the mailpiece.

945.24 Mailers requesting return receipt service after mailing will be provided the date of delivery and the name of the person who signed for the article.

945.25 If the mailer does not receive a return receipt within a specified period of time from the date of mailing, the mailer may request a duplicate return receipt. No fee is charged for a duplicate return receipt.

945.3 Fees.

945.31 The fees for return receipt service are set forth in Fee Schedule 945.

946 Restricted Delivery

946.1 Definition.

946.11 Restricted delivery service is a service that provides a means by which a mailer may direct that delivery will be made only to the addressee or to someone authorized by the addressee to receive such mail.

946.2 Description of Service.

946.21 This service is available for mail sent under the following sections:

a. Certified Mail	941
b. COD Mail	944
c. Insurance (if insured for more than $50)	943
d. Registered Mail	942

946.22 Restricted delivery is available to the mailer at the time of mailing or after mailing.

946.23 Restricted delivery service is available only to natural persons specified by name.

946.24 A record of delivery will be retained by the Postal Service for a specified period of time.

946.25 Failure to provide restricted delivery service when requested after mailing, due to prior delivery, is not grounds for refund of the fee or communications charges.

946.3 Fees.

946.31 The fees for restricted delivery service are set forth in Fee Schedule 946.

947 Certificate of Mailing

947.1 Definition.

947.11 Certificate of mailing service is a service that furnishes evidence of mailing.

947.2 Description of Service.

947.21 Certificate of mailing service is available to mailers of matter sent under the classification schedule to any class of mail.

947.22 A receipt is not obtained upon delivery of the mail to the addressee. No record of mailing is maintained at the post office.

947.23 Additional copies of certificates of mailing may be obtained by the mailer.

947.3 Other Services.

947.31 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

Service	Fee schedule
a. Parcel airlift	951
b. Special handling	952

947.4 Fees.

947.41 The fees for certificate of mailing service are set forth in Fee Schedule 947.

948 Delivery Confirmation

948.1 Definition.

948.11 Delivery confirmation service provides electronic confirmation to the mailer that an article was delivered or that a delivery attempt was made.

948.2 Description of Service.

948.21 Delivery confirmation service is available for Priority Mail and the Parcel Post, Bound Printed Matter, Special and Library subclasses of Standard Mail.

948.22 Delivery confirmation service may be requested only at the time of mailing.

948.23 Mail for which delivery confirmation service is requested must meet preparation requirements established by the Postal Service, and bear a barcode specified by the Postal Service.

948.24 Matter for which delivery confirmation service is requested must be deposited in a manner specified by the Postal Service.

948.3 Fees.

948.31 Delivery confirmation service is subject to the fees set forth in Fee Schedule 948.

950 Parcel Handling

951 Parcel Airlift (PAL)

951.1 Definition.

951.11 Parcel airlift service is a service that provides for air transportation of parcels on a space available basis to or from military post offices outside the contiguous 48 states.

951.2 Description of Service.

951.21 Parcel airlift service is available for mail sent under the Standard Mail Classification Schedule.

951.3 Physical Limitations.

951.31 The minimum physical limitations established for the mail sent under the classification schedule for which postage is paid apply to parcel airlift mail. In no instance may the parcel exceed 30 pounds in weight, or 60 inches in length and girth combined.

951.4 Requirements of the Mailer.

951.41 Mail sent under this section must be endorsed as specified by the Postal Service.

951.5 Deposit of Mail.

951.51 PAL mail must be deposited in a manner specified by the Postal Service.

951.6 Forwarding and Return.

951.61 PAL mail sent for delivery outside the contiguous 48 states is forwarded as set forth in section 2030 of the General Definitions, Terms and Conditions. PAL mail sent for delivery within the contiguous 48 states is forwarded or returned as set forth in section 353 as appropriate.

951.7 Other Services.

951.71 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee Schedule
a. Certificate of mailing	947
b. Insurance	943
c. Restricted delivery (if insured for more than $50)	946
d. Return receipt (if insured for more than $50)	945
e. Special handling	952

951.8 Fees.

951.81 The fees for parcel airlift service are set forth in Fee Schedule 951.

952 Special Handling

952.1 Definition.

952.11 Special handling service is a service that provides preferential handling to the extent practicable during dispatch and transportation.

952.2 Description of Service.

952.21 Special handling service is available for mail sent under the following classification schedules:

a. First-Class Mail;

b. Parcel Post; Bound Printed Matter; Special, and Library subclasses of Standard Mail.

952.22 Special handling service is mandatory for matter that requires special attention in handling, transportation and delivery.

952.3 Requirements of the Mailer.

952.31 Mail sent under this section must be identified as specified by the Postal Service.

952.4 Deposit of Mail.

952.41 Mail sent under this section must be deposited in a manner specified by the Postal Service.

952.5 Forwarding and Return.

952.51 If undeliverable as addressed, special handling mail that is forwarded to the addressee is given special handling without requiring payment of an additional handling fee. However, additional postage at the applicable Standard Mail rate is collected on delivery.

952.6 Other Services.

952.61 The following services, if applicable to the subclass of mail, may be obtained in conjunction with mail sent under this section upon payment of the applicable fees:

Service	Fee schedule
a. COD mail	944
b. Insurance	943
c. Parcel airlift	951
d. Merchandise return (shippers only)	932

952.7 Fees.

952.71 The fees for special handling service are set forth in Fee Schedule 952.

960 Stamped Paper

961 Stamped Envelopes

961.1 Definition.

961.11 Plain stamped envelopes and printed stamped envelopes are envelopes with postage thereon offered for sale by the Postal Service.

961.2 Description of Service.

961.21 Stamped envelopes are available for:

a. First-Class Mail within the first rate increment.

b. Standard Mail mailed at a minimum per piece rate as specified by the Postal Service.

961.22 Printed stamped envelopes may be obtained by special request.

961.3 Fees.

961.31 The fees for stamped envelopes are set forth in Fee Schedule 961.

962 Stamped Cards

962.1 Definition.

962.11 Stamped Cards. Stamped Cards are cards with postage imprinted or impressed on them and supplied by the Postal Service for the transmission of messages.

962.12 Double Stamped Cards. Double Stamped Cards consist of two attached cards, one of which may be detached by the receiver and returned by mail as a single Stamped Card.

962.2 Description of Service. Stamped Cards are available for First-Class Mail.

962.3 Fees. The fees for Stamped Cards are set forth in Fee Schedule 962.

970 Postal Money Orders

971 Domestic Postal Money Orders

971.1 Definition.

971.11 Money order service is a service that provides the customer with an instrument for payment of a specified sum of money.

971.2 Description of Service.

971.21 The maximum value for which a domestic postal money order may be purchased is $700. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed by law or under regulations prescribed by the Postal Service.

971.22 A receipt of purchase is provided at no additional cost.

971.23 The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued.

971.24 If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer.

971.25 Inquiries or claims may be filed by the purchaser, payee, or endorsee.

971.3 Fees.

971.31 The fees for domestic postal money orders are set forth in Fee Schedule 971.

* * * * *

2033 Applicable provisions. The provisions of sections 150, 250, 350, 450, 935 and 936 apply to forwarding and return.

* * * * *

3010 Packaging.

* * * * *

d. It is marked by the mailer with a material that is neither readily water soluble nor easily rubbed off or smeared, and the marking will be sharp and clear.

* * * * *

BILLING CODE 7710–12–U

Rate Schedules

Calculation of Postage

* * * * *

EXPRESS MAIL SCHEDULES 121, 122 AND 123

[Dollars]

Weight not exceeding (Pounds)	Schedule 121 same day airport service	Schedule 122 custom designed	Schedule 123 next day and second day PO to PO	Schedule 123 next day and second day PO to addressee
½				
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				

EXPRESS MAIL SCHEDULES 121, 122 AND 123—Continued

[Dollars]

Weight not exceeding (Pounds)	Schedule 121 same day airport service	Schedule 122 custom designed	Schedule 123 next day and second day PO to PO	Schedule 123 next day and second day PO to addressee
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
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63				
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66				
67				
68				
69				
70				

[1] The applicable 2-pound rate is charged for matter sent in a 'flat rate' envelope provided by the Postal Service
[2] Add $_____ for each pickup stop.
[3] Add $_____ for each Custom Designed delivery stop.

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS

	Rate (cents)
Regular	
Single Piece: First Ounce	
Presort [1]	
Qualified Business Reply Mail	
Additional Ounce [2]	
Nonstandard Surcharge	
Single Piece	
Presort	
Automation—Presort [1]	
Letters [3]	
Basic Presort [4]	
3-Digit Presort [5]	
5-Digit Presort [6]	
Carrier Route Presort [7]	
Flats [8]	
3/5-Digit Presort [10]	
Additional Ounce [2]	

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS—Continued

	Rate (cents)
Nonstandard Surcharge	

[1] A mailing fee of $_____ must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. For presorted mailings weighing more than 2 ounces, subtract $_____ cents per piece.

[2] Rate applies through 13 ounces. Heavier pieces are subject to Priority Mail rates.

[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements specified by the Postal Service.

[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations specified by Postal Service.

[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.

[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery-point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements specified by the Postal Service.

[9] Rate applies to flat-size Automation-Presort category mail not mailed at the 3/5-Digit rate.

[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

FIRST-CLASS MAIL RATE SCHEDULE 222—CARDS

	Rate (cents)
Regular	
Single Piece	
Presort [1]	
Qualified Business Reply Mail	
Automatic-Presort [1,2]	
Basic Presort [3]	
3-Digit Presort [4]	
5-Digit Presort [5]	

FIRST-CLASS MAIL RATE SCHEDULE 222—CARDS—Continued

	Rate (cents)
Carrier Route Presort [6]	

[1] A mailing fee of $_____ must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate.

[2] Rates apply to bulk-entered mailings of at least 500 pieces, which must be barcoded and meet other preparation requirements specified by the Postal Service.

[3] Rate applies to Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[4] Rate applies to Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

[5] Rate applies to Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[6] Rate applies to Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

FIRST-CLASS MAIL SCHEDULE 223—PRIORITY MAIL SUBCLASS

[Dollars]

Weight not exceeding (pounds)	L, 1, 2, 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
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32						
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37						
38						
39						
40						
41						
42						
43						
44						
45						
46						
47						
48						
49						
50						
51						
52						
53						
54						

FIRST-CLASS MAIL SCHEDULE 223—PRIORITY MAIL SUBCLASS—Continued

[Dollars]

Weight not exceeding (pounds)	L, 1, 2, 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
55						
56						
57						
58						
59						
60						
61						
62						
63						
64						
65						
66						
67						
68						
69						
70						

[1] The 2-pound rate is charged for matter sent in a 'flat rate' envelope provided by the Postal Service.
[2] Add $_____ for each pickup stop.
[3] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

STANDARD MAIL RATE SCHEDULE 321.2A—REGULAR SUBCLASS PRESORT CATEGORY [1]

	Rate (cents)
Letter Size	
Piece Rate	
Basic	
3/5-Digit	
Destination Entry Discount per Piece	
BMC	
SCF	
Non-Letter Size [2]	
Piece Rate	
Minimum per Piece [3]	
Basic	
3/5 Digit	
Destination Entry Discount per Piece	
BMC	
SCF	
Pound Rate [3]	
Plus per Piece Rate	
Basic	
3/5-Digit	
Destination Entry Discount per Pound	
BMC	
SCF	

[1] A fee $_____ must be paid each 12-month period for each bulk mailing permit.
[2] Residual shape pieces are subject to a surcharge of $_____ per piece.
[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 321.2B—REGULAR SUBCLASS AUTOMATION CATEGORY [1]

	Rate (cents)
Letter Size [2]	
Piece Rate	
Basic Letter [3]	
3-Digit Letter [4]	
5-Digit Letter [5]	
Destination Entry Discount per Piece	
BMC	
SCF	
Flat Size [6]	
Piece Rate	
Minimum per Piece [7]	
Basic Flat [8]	
3/5-Digit Flat [9]	
Destination Entry Discount per Piece	
BMC	
SCF	
Pound Rate [7]	
Plus per piece Rate	
Basic Flat [8]	
3/5-Digit Flat [9]	
Destination Entry Discount per Pound	
BMC	
SCF	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

STANDARD MAIL RATE SCHEDULE 321.3—ENHANCED CARRIER ROUTE SUBCLASS [1]

	Rate (cents)
Letter Size	
Piece Rate	
Basic	
Basic Automated Letter [2]	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Non-Letter Size [3]	
Piece Rate	
Minimum per Piece [4]	
Basic	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Pound Rate [4]	
Plus per Piece Rate	
Basic	
High Density	
Saturation	
Destination Entry Discount per Pound	
BMC	
SCF	

STANDARD MAIL RATE SCHEDULE 321.3—ENHANCED CARRIER ROUTE SUBCLASS [1]—Continued

	Rate (cents)
DDU	

[1] A fee of $_____ must be paid each 12-month period for each bulk mailing permit.
[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.
[3] Residual shape pieces are subject to a surcharge of $_____ per piece.
[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 321.4A—NONPROFIT SUBCLASS PRESORT CATEGORIES [1]

[Full rates]

	Rates (cents)
Letter Size	
Piece Rate	
Basic	
3/5-Digit	
Destination Entry Discount per Piece	
BMC	
SCF	
Non-Letter Size [2]	
Piece Rate	
Minimum per Piece [3]	
Basic	
3/5-Digit	
Destination Entry Discount per Piece	
BMC	
SCF	
Pound Rate [3]	
Plus per Piece Rate	
Basic	
3/5-Digit	
Destination Entry Discount per Pound	
BMC	
SCF	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.
[2] Residual shape pieces are subject to a surcharge off $_____ per piece.
[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 321.4B—NONPROFIT SUBCLASS AUTOMATION CATEGORIES [1]

[Full rates]

	Rates (cents
Letter Size [2]	
Piece Rate	
Basic Letter [3]	
3-Digit Letter [4]	
5-Digit Letter [5]	
Destination Entry Discount per Piece	
BMC	
SCF	
Flat Size [6]	
Piece Rate	
Minimum per Piece [7]	
Basic Flat [8]	
3/5-Digit Flat [9]	
Destination Entry Discount per Piece	
BMC	
SCF	
Pound Rate [7]	
Plus per Piece Rate	
Basic Flat [8]	
3/5-Digit [9]	
Destination Entry Discount per Pound	
BMC	
SCF	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.
[2] For letter-size automation pieces meeting applicable Postal Service regulations.
[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.
[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.
[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.
[6] For flat-size automation mail meeting applicable Postal Service regulations.
[7] Mail pays either the minimum piece rate or the pound rate, whichever is higher.
[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.
[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

STANDARD MAIL RATE SCHEDULE 321.5—NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS [1]

[Full rates]

	Rates (cents)
Letter Size	
Piece Rate	
Basic	
Basic Automated Letter [2]	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Non-Letter Size [3]	
Piece Rate	
Minimum per Piece [4]	
Basic	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Pound Rate [4]	
Plus per Piece Rate	
Basic	
High Density	
Saturation	
Destination Entry Discount per Pound	
BMC	
SCF	
DDU	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.
[2] Residual shape pieces are subject to a surcharge off $_____ per piece.
[3] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

STANDARD MAIL RATE SCHEDULE 322.1A*—PARCEL POST SUBCLASS INTER-BMC RATES

[Dollars]

Weight not exceeding (pounds)	Zone 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							

STANDARD MAIL RATE SCHEDULE 322.1A *—PARCEL POST SUBCLASS INTER-BMC RATES—Continued

[Dollars]

Weight not exceeding (pounds)	Zone 1 & 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
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56							
57							
58							
59							
60							
61							
62							
63							
64							
65							
66							
67							
68							
69							
70							
Oversize parcels [6]							

*** Notes:**

[1] For nonmachinable Inter-BMC parcels, add: $_____ per piece.

[2] For each pickup stop, add: $_____

[3] For Origin Bulk Mail Center Discount, deduct $_____ per piece.

[4] For BMC Presort, deduct $_____ per piece.

[5] For Barcoded Discount, deduct $_____ per piece.

[6] See DMCS section 322.161 for oversize Parcel Post.

[7] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

STANDARD MAIL RATE SCHEDULE 322.1B*—PARCEL POST SUBCLASS INTRA-BMC RATES

[Dollars]

Weight not exceeding (pounds)	Local	Zone 1 & 2	Zone 3	Zone 4	Zone 5
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
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57					
58					
59					
60					
61					
62					
63					
64					
65					
66					
67					
68					
69					
70					
Oversize parcels [3]					

*** Notes:**

[1] For each pickup stop, add $_____.
[2] For Barcoded Discount, deduct $_____.
[3] See DMCS section 322.161 for oversize Parcel Post.
[4] Parcel Post pieces exceeding 94 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.

STANDARD MAIL RATE SCHEDULE 322.1C*—PARCEL POST SUBCLASS DESTINATION BMC RATES

[Dollars]

Weight not exceeding (pounds)	Zone 1 & 2	Zone 3	Zone 4	Zone 5
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
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60				
61				
62				
63				
64				
65				
66				

STANDARD MAIL RATE SCHEDULE 322.1C*—PARCEL POST SUBCLASS DESTINATION BMC RATES—Continued

[Dollars]

Weight not exceeding (pounds)	Zone 1 & 2	Zone 3	Zone 4	Zone 5
67				
68				
69				
70				
Oversize parcels [2]				

***Notes:**
[1] For Barcoded Discount, deduct $_____.
[2] See DMCS section 322.161 for oversize Parcel Post.
[3] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15 pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[4] A fee of _____ must be paid each for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.ID*—PARCEL POST SUBCLASS DESTINATION SCF RATES

[Dollars]

Weight (pounds)	Weight (pounds)
	36
2	37
3	38
4	39
5	40
6	41
7	42
8	43
9	44
10	45
11	46
12	47
13	48
14	49
15	50
16	51
17	52
18	53
19	54
20	55
21	56
22	57
23	58
24	59
25	60
26	61
27	62
28	63
29	64
30	65
31	66
32	67
33	68
34	69
35	70

STANDARD MAIL RATE SCHEDULE 322.ID*—PARCEL POST SUBCLASS DESTINATION SCF RATES—Continued

[Dollars]

Weight (pounds)	Weight (pounds)
	Oversize parcels [1]

***Notes:**
[1] See DMCS section 322.161 for oversize Parcel Post.
[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15-pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[3] A fee of $_____ must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.1E*—PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES

[Dollars]

Weight (pounds)	Weight (pounds)
	36
2	37
3	38
4	39
5	40
6	41
7	42
8	43
9	44
10	45
11	46
12	47
13	48

STANDARD MAIL RATE SCHEDULE 322.1E*—PARCEL POST SUBCLASS DESTINATION DELIVERY UNIT RATES—Continued

[Dollars]

Weight (pounds)	Weight (pounds)
14	49
15	50
16	51
17	52
18	53
19	54
20	55
21	56
22	57
23	58
24	59
25	60
26	61
27	62
28	63
29	64
30	65
31	66
32	67
33	68
34	69
35	70
	Oversize parcels [1]

***Notes:**
[1] See DMCS section 322.161 for oversize Parcel Post.
[2] Parcel Post pieces exceeding 84 inches in length and girth combined and weighing less than 15-pounds are subject to a rate equal to that for a 15 pound parcel for the zone to which the parcel is addressed.
[3] A fee of $_____ must be paid each year for DBMC, DSCF, and DDU.

STANDARD MAIL RATE SCHEDULE 322.3A*—BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES [1]

[Dollars]

Weight not exceeding (pounds)	Local	Zones						
		1 & 2	3	4	5	6	7	8
1.5								
2								
2.5								
3								
3.5								
4								
4.5								
5								

STANDARD MAIL RATE SCHEDULE 322.3A*—BOUND PRINTED MATTER SUBCLASS SINGLE PIECE RATES [1]—Continued

[Dollars]

Weight not exceeding (pounds)	Local	Zones						
		1 & 2	3	4	5	6	7	8
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
Per Piece Rate								
Per Pound Rate								

***Notes:**
[1] Includes both catalogs and similar bound printed matter.
[2] For barcoded discount, deduct $_____ per piece.

STANDARD MAIL RATE SCHEDULE 322.3B—BOUND PRINTED MATTER SUBCLASS BULK AND CARRIER ROUTE PRESORT RATES [1]

[Dollars]

Zone	Per piece[3]	Carrier route[2]	Per pound
Local			
1&2			
3			
4			
5			
6			
7			
8			

[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as specified by the Postal Service.
[3] For Barcoded Discount, deduct $_____ per piece.

STANDARD MAIL RATE SCHEDULES 323.1 AND 323.2 SPECIAL AND LIBRARY RATE SUBCLASSES

	Rates (cents)
Schedule 323.1: Special	
First Pound.	
Not presorted [4].	
LEVEL A Presort (5-digits) [1 2].	
LEVEL B Presort (BMC) [1 3 4].	
Each additional pound through 7 pounds.	

STANDARD MAIL RATE SCHEDULES 323.1 AND 323.2 SPECIAL AND LIBRARY RATE SUBCLASSES—Continued

	Rates (cents)
Each additional pound over 7 pounds.	
Schedule 323.2: Library	
First Pound.	
Not presorted [4].	
LEVEL A Presort (5-digits) [1 2].	
LEVEL B Presort (BMC) [1 3 4].	

STANDARD MAIL RATE SCHEDULES 323.1 AND 323.2 SPECIAL AND LIBRARY RATE SUBCLASSES—Continued

	Rates (cents)
Each additional pound through 7 pounds.	
Each additional pound over 7 pounds.	

[1] A fee of $ _____ must be paid once 12-month period for each permit.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.
[4] For Barcoded Discount, deduct $ _____ per-piece.

PERIODICALS RATE SCHEDULE 421—REGULAR SUBCLASS [1 2]

	Postage rate unit	Rates (cents)
Per Pound:		
Nonadvertising Portion	Pound.	

PERIODICALS RATE SCHEDULE 421—REGULAR SUBCLASS [1] [2]—Continued

	Postage rate unit	Rates (cents)
Advertising Portion:		
Delivery Office[4]	Pound.	
SCF[5]	Pound.	
1&	Pound.	
3	Pound.	
4	Pound.	
5	Pound.	
6	Pound.	
7	Pound.	
8	Pound.	
Science of Agriculture:		
Delivery Office	Pound.	
SCF	Pound.	
Zones 1&2	Pound.	
Per Piece:		
Less Nonadvertising Factor[6]	.	
Required Preparation[7]	Piece.	
Presorted to 3-digit	Piece.	
Presorted to 5-digit	Piece.	
Presorted to Carrier Route	Piece.	
Discounts:		
Prepared to Delivery Office[4]	Piece.	
Prepared to SCF[5]	Piece.	
High Density[8]	Piece.	
Saturation[9]	Piece.	
Automation Discounts for Automation Compatible Mail[10]		
From Required:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	
From 3-Digit:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	
From 5-Digit:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	

[1] The rates in this schedule also apply to commingled nonsubscriber, non-requester, complimentary, and sample copies in excess of 10 percent allowance in regular-rate, non-profit, and classroom periodicals.
[2] Rated do not apply to otherwise regular rate mail that qualifies for the Within County rates in Schedule 423.2.
[3] Changes are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
[4] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.
[5] Applies to Mail delivered with the SCF area of the originating SCF office.
[6] For postage calculations, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[7] Mail not eligible for carrier-route, 5-digit or 3-digit rates.
[8] Applicable to high density mail, deducted from carrier route presort rate.
[9] Applicable to saturation mail, deducted from carrier route presort rate.
[10] For automation compatible mail meeting applicable Postal Service regulations.

PERIODICALS RATE SCHEDULE 423.2—WITHIN COUNTY

[Full rates]

	Rate (cents)
Per Pound	
General	
Delivery Office[1]	
Per Piece	
Required Presort	
Presorted to 3-digit	
Presorted to 5-digit	
Carrier Route Presort	
Per Piece Discount	
Delivery Office[2]	
High Density (formerly 125 piece)[3]	

PERIODICALS RATE SCHEDULE 423.2—WITHIN COUNTY—Continued

[Full rates]

	Rate (cents)
Automation Discounts for Automation Compatible Mail[4]	
From Required:	
Prebarcoded Letter size	
Prebarcoded Flat size	
From 3-digit:	
Prebarcoded Letter size	
Prebarcoded Flat size	
From 5-digit:	
Prebarcoded Letter size	

PERIODICALS RATE SCHEDULE 423.2—WITHIN COUNTY—Continued

[Full rates]

	Rate (cents)
Prebarcoded Flat size	

[1] Applicable only to carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.
[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.
[3] Applicable to high density mail, deducted from carrier route presort rate. Mailers also may qualify for this discount on an alternative basis as provided in DMCS section 423.83.
[4] For automation compatible pieces meeting applicable Postal Service regulations.

PERIODICALS RATE SCHEDULE 423.3—PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS [10]

[Full rates]

	Postage rate unit	Rate [1] (cents)
Per Pound:		
Nonadvertising portion	Pound.	
Advertising portion.[9]		
Delivery Office [2]	Pound.	
SCF [3]	Pound.	
1&2	Pound.	
3	Pound.	
4	Pound.	
5	Pound.	
6	Pound.	
7	Pound.	
8	Pound.	
Per Piece:		
Less Nonadvertising Factor [4].		
Required Preparation [5]	Piece.	
Presorted to 3-digit	Piece.	
Presorted to 5-digit	Piece.	
Presorted to Carrier Route	Piece.	
Discounts:		
Prepared to Delivery Office [2]	Piece.	
Prepared to SCF [3]	Piece.	
High Density (formerly 125-Piece) [6]	Piece.	
Saturation [7]	Piece.	
Automation Discounts for Automation Compatible Mail [8]		
From Required:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	
From 3-Digit:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	
From 5-Digit:		
Prebarcoded letter size	Piece.	
Prebarcoded flats	Piece.	

[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
[2] Applies to carrier route (including high density and saturation) mail delivered within the delivery area of the originating post office.
[3] Applies to mail delivered within the SCF area of the originating SCF office.
[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[5] Mail not eligible for carrier route, 5-digit or 3-digit rates.
[6] Applicable to high density mail, deducted from carrier route presort rate.
[7] Applicable to saturation mail, deducted from carrier route presort rate.
[8] For automation compatible mail meeting applicable Postal Service regulations.
[9] Not applicable to publications containing 10 percent or less advertising content.
[10] If qualified, nonprofit publications may use Within County rates for applicable portions of a mailing.

PERIODICALS RATE SCHEDULE 423.4—CLASSROOM PUBLICATIONS [10]

[Full rates]

	Postage rate unit	Rate [1] (cents)
Per Pound:		
Nonadvertising Portion	Pound.	
Advertising Portion:[9]		
Delivery Office [2]	Pound.	
SCF [3]	Pound.	
1&2	Pound.	
3	Pound.	
4	Pound.	
5	Pound.	
6	Pound.	
7	Pound.	
8	Pound.	
Per Piece:		
Less Nonadvertising Factor: [4].		
Required Preparation [5]	Piece.	
Presorted to 3-digit	Piece.	
Presorted to 5-digit	Piece.	
Presorted to Carrier Route	Piece.	

PERIODICALS RATE SCHEDULE 423.4—CLASSROOM PUBLICATIONS [10]—Continued

[Full rates]

	Postage rate unit	Rate [1] (cents)
Discounts:		
Prepared to Delivery Office [2]	Piece.	
Prepared to SCF	Piece.	
High Density (formerly 125-Piece) [6]	Piece.	
Saturation [7]	Piece.	
Automation Discounts for Automation Compatible Mail [8]		
From Required:		
Prebarcoded Letter size	Piece.	
Prebarcoded Flats	Piece.	
From 3-Digit:		
Prebarcoded Letter size	Piece.	
Prebarcoded Flats	Piece.	
From 5-Digit		
Prebarcoded Letter Size	Piece.	
Prebarcoded Flats	Piece.	

[1] Charges are computed by adding the appropriate per-piece charge to the sum of the nonadvertising portion and the advertising portion, as applicable.
[2] Applies to carrier route (including 125-piece walk sequence and saturation) mail delivered within the delivery area of the originating post office.
[3] Applies to mail delivered within the SCF area of the originating SCF office.
[4] For postage calculation, multiply the proportion of nonadvertising content by this factor and subtract from the applicable piece rate.
[5] Mail not eligible for carrier route, 5-digit, or 3-digit rates.
[6] For walk sequenced mail in batches of 125 pieces or more from carrier route presorted mail.
[7] Applicable to saturation mail; deducted from carrier route presort rate.
[8] For automation compatible mail meeting applicable Postal Service regulations.
[9] Not applicable to publications containing 10 percent or less of advertising content.
[10] If qualified, classroom publication may use Within County rates for applicable portions of a mailing.

FEE SCHEDULE 911—ADDRESS CORRECTIONS

Description	Fee
Per manual correction	
Per automated correction	

FEE SCHEDULE 912

	Fee
Zip Coding of Mailing Lists:	
Per thousand addresses	
Correction of Mailing Lists:	
Per submitted address	
Minimum charge per list corrected	
Address Changes for Election Boards and Registration Commissions:	
Per change of address	

FEE SCHEDULE 912—Continued

	Fee
Corrections Associated With Arrangement of Address Cards in Carrier Delivery Sequence:	
Per Correction	

Note:
When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.

FEE SCHEDULE 921—POST OFFICE BOXES AND CALLER SERVICE

	Fee Group				
	A	B	C	D	E
I. Semi-annual Box Fees [1]:					
Box Size [2]:					
1					
2					
3					
4					
5					
II. Semi-annual Caller Service Fees:					
Fee Group:					
A					
B					
C					
D					
III. Annual Call Number Reservation Fee:					
(All applicable Fee Groups)					

[1] A customer ineligible for carrier delivery may obtain a post office box at Group E fees, subject to administrative decisions regarding customer's proximity to post office.
[2] Box Size 1=under 296 cubic inches; 2=296–499 cubic inches; 3=500–999 cubic inches; 4=1000–1999 cubic inches; 5=2000 cubic inches and over.

FEE SCHEDULE 931 [1] BUSINESS REPLY MAIL

	Fee
Active business reply advance deposit account:	
Per piece:	
Qualified	
Nonletter-size, using reverse manifest (experimental)	
Nonletter-size, using weight averaging (experimental)	
Other.	
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	
Annual License and Accounting Fees:	
Accounting Fee for Advance Deposit Account	
Permit fee (with or without Advance Deposit Account)	
Monthly Fees for customers using a reverse manifest or weight averaging for nonletter-size business reply:	
Nonletter-size, using reverse manifest (experimental)	
Nonletter-size, using weight averaging (experimental)	
Set-up/Qualification fee for customers using a reverse manifest or weight averaging for nonletter-size business reply:	
Nonletter-size, using reverse manifest (experimental)	
Nonletter-size, using weight averaging (experimental)	

[1] Experimental per piece, monthly, and set-up/qualification fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire June 7, 1999.

FEE SCHEDULE 932—MERCHANDISE RETURN

	Fee
Per Transaction:	
Shipper must have an advance deposit account (see DMCS Schedule 1000)	

FEE SCHEDULE 933—ON-SITE METER SETTING

	Fee
First Meter:	
By appointment	
Unscheduled request	
Additional meters:	
Checking meter in or out of service (per meter)	

Fee Schedule 934—[Reserved]

FEE SCHEDULE 935—BULK PARCEL RETURN SERVICE

	Fee
Per Returned Piece	

FEE SCHEDULE 941—CERTIFIED MAIL

Description	Fee (in addition to postage)
Service (per mailpiece)	

FEE SCHEDULE 942—REGISTERED MAIL

Declared value of article [1] (in dollars)	Fee (in addition to postage)	Handling charge
0		None.
0.01 to 100		None.
100.01 to 500		None.
500.01 to 1,000		None.
1,000.01 to 2,000		None.
2,000.01 to 3,000		None.
3,000.01 to 4,000		None.
4,000.01 to 5,000		None.
5,000.01 to 6,000		None.
6,000.01 to 7,000		None.
7,000.01 to 8,000		None.
8,000.01 to 9,000		None.
9,000.01 to 10,000		None.
10,000.01 to 11,000		None.
11,000.01 to 12,000		None.
12,000.01 to 13,000		None.
13,000.01 to 14,000		None.
14,000.01 to 15,000		None.
15,000.01 to 16,000		None.
16,000.01 to 17,000		None.
17,000.01 to 18,000		None.
18,000.01 to 19,000		None.
19,000.01 to 20,000		None.
20,000.01 to 21,000		None.
21,000.01 to 22,000		None.
22,000.01 to 23,000		None.
23,000.01 to 24,000		None.
24,000.01 to 25,000		None.
25,000 to 1 million		Plus _____ cents for each $1000 (or fraction thereof) over $25,000.
Over $1 million to 15 million		Plus _____ cents for each $1000 (or fraction thereof) over $1 million.

FEE SCHEDULE 942—REGISTERED MAIL—Continued

Declared value of article [1] (in dollars)	Fee (in addition to postage)	Handling charge
Over 15 million		Plus amount determined by the Postal Service based on weight, space and value.

[1] Articles with a declared value of more than $25,000 can be registered, but compensation for loss or damage is limited to $25,000.

FEE SCHEDULE 943—INSURANCE

Coverage	Fee (in addition to postage)
Document Reconstruction:	
$0.01 to $500	no charge
Mechandise:	
$0.01 to $500	no charge
500.01 to 5000	$_____ for each $100 (or fraction thereof) over $500 is value.
General Insurance [1]	
$0.01 to $50	
50.01 to 100	
100.01 to 5000	$_____ plus $_____ for each $100 (or fraction thereof) over $100 in coverage.

[1] For bulk insurance, deduct $_____ per piece.

FEE SCHEDULE 944—COLLECT ON DELIVERY

	Fee (in addition to postage)
Amount to be collected, or Insurance Coverage Desired:	
$0.01 to $50	
50.01 to 100	
100.01 to 200	
200.01 to 300	
300.01 to 400	
400.01 to 500	
500.01 to 600	
Notice of nondelivery of COD	
Alteration of COD charges or designation of new addressee	
Registered COD	

FEE SCHEDULE 945—RETURN RECEIPTS

Description	Fee (in addition to postage)
Receipt Issued at Time of Mail: [1]	
Items other than Merchandise	
Merchandise (without another special service)	
Receipt Issued after Mailing: [2]	

[1] This receipt shows the signature of the person to whom the mailpiece was delivered, the date of delivery and the delivery address, if such address is different from the address on the mailpiece.

[2] This receipt shows to whom the mailpiece was delivered and the date of delivery.

FEE SCHEDULE 946—RESTRICTED DELIVERY

	Fee (in addition to postage)
Per Piece	

FEE SCHEDULE 947—CERTIFICATE OF MAILING

	Fee (in addition to postage)
Individual Pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece)	
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	

FEE SCHEDULE 947—CERTIFICATE OF MAILING—Continued

	Fee (in addition to postage)
Bulk Pieces:	
Identical pieces of First-Class and Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
Up to 1,000 pieces (one certificate for total number)	
Each additional 1,000 pieces or fraction	
Duplicate copy	

FEE SCHEDULE 948—DELIVERY CONFIRMATION

Service	Fee (in addition to postage)
Used in Conjunction with Priority Mail:	
Electronic	
Manual	

FEE SCHEDULE 948—DELIVERY CONFIRMATION—Continued

Service	Fee (in addition to postage)
Used in Conjunction with Parcel Post, Bound Printed Matter, Library, and Special Standard Mail:	
Electronic	
Manual	

FEE SCHEDULE 951—PARCEL AIR LIFT

	Fee (in addition to Parcel Post postage)
Up to 2 pounds	
Over 2 up to 3 pounds	
Over 3 up to 4 pounds	
Over 4 pounds	

FEE SCHEDULE 952—SPECIAL HANDLING

	Fee (in addition to postage)
Not more than 10 pounds	
More than 10 pounds	

FEE SCHEDULE 961—STAMPED ENVELOPES

Description	Fee (in addition to postage)
Single Sale	
Single Sale Hologram	
PLAIN BULK (500) #6¾ size:	
Regular	
Window	

FEE SCHEDULE 961—STAMPED ENVELOPES—Continued

Description	Fee (in addition to postage)
PRINTED BULK (500) #6¾ size:	
Regular	
Window	
BANDED (500) #6¾ size	
PLAIN BULK (500) size >#6¾ through #10: [1]	
Regular	
Window	
Hologram	
PRINTED BULK (500) size >#6¾ through #10:	
Regular	
Window	
Savings Bond	
Hologram	
BANDED (500) size >#6¾ size through #10	
Multi-Color Printing (500):	
#6¾ size	
#10 size [1]	
Printing Charge per 500 Envelopes (for each type of printed envelope):	
Minimum Order (500 envelopes)	
Order for 1,000 or more envelopes	
Double Window (500) size >#6¾ through #10 [1]	
Household (50):	
Size #6¾:	
Regular	
Window	
Size >#6¾ through #10:	
Regular	
Window	
Hologram	

[1] Fee for precancelled envelopes is the same.

FEE SCHEDULE 962—STAMPED CARDS

Description	Fee (in addition to postage)
Stamped Card	
Double Stamped Card	

FEE SCHEDULE 971—MONEY ORDERS

	Fee
Domestic:	
$0.01 to $700	
APO–FPO:	
$0.01 to $700	
Inquiry Fee, which includes the issuance of copy of a paid money order	

SCHEDULE 1000

	Fee
First-Class Presorted Mailing	
Periodicals:	
A. Original Entry	
B. Additional Entry	
C. Re-entry	
D. Registration for News Agents	
Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route Standard Mail Bulk Mailing	
Parcel Post: Destination BMC, SCF, and DDU	
Special and Library Standard Mail Presorted Mailing	
Authorization to Use Permit Imprint	
Merchandise Return (per facility receiving merchandise return labels)	
Business Reply Mail Permit (see Fee Schedule 931)	
Authorization to Use Bulk Parcel Return Service	

[FR Doc. 99–326 Filed 1–7–99; 8:45 am]

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Federal Register

Friday
January 8, 1999

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Higher Education Challenge Grants Program for Fiscal Year 1999; Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Higher Education Challenge Grants Program for Fiscal Year 1999; Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the Higher Education Challenge Grants Program for Fiscal Year (FY) 1999. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of Challenge Grant awards. CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2).

DATES: Proposals must be received by close of business on March 9, 1999. Proposals received after the closing date will not be considered for funding. Forms indicating intent to submit a proposal are due on February 9, 1999. User comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written user input comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W., Washington, D.C. 20250–2299, or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gilmore, Ph.D., Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2251; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2251; telephone: (202) 720–2211; e-mail: jgilmore@reeusda.gov.

STAKEHOLDER INPUT: CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2). Written user input comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W., Washington, D.C. 20250–2299, or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. User comments received after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Administrative Provisions

This Program is subject to the provisions found at 7 CFR Part 3405. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects.

B. Legislative Authority

The authority for this program is contained in section 1417(b)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(1)). In accordance with the statutory authority, subject to the availability of funds, the Secretary of Agriculture, who has delegated the authority to the Administrator of CSREES, may make competitive grants, for a period not to exceed 5 years, to land-grant colleges and universities, to colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct programs to respond to identified State, regional, national or international educational needs in the food and agricultural sciences. For this program, the term ''food and agricultural sciences'' means basic, applied, and developmental teaching activities in food and fiber, agricultural, renewable natural resources, forestry, and physical and social sciences, and including related disciplines as defined in section 1404(8) of NARETPA, 7 U.S.C. 3103(8).

C. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.217, Higher Education Challenge Grants Program.

D. Purpose of the Program

Grants will be made to U.S. colleges and universities to strengthen their teaching programs in the food and agricultural sciences in the targeted need areas as described herein. The Higher Education Challenge Grants Program is designed to stimulate and enable colleges and universities to provide the quality of education necessary to produce baccalaureate or higher degree level graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. It is intended that projects supported by the program will: (1) Address a State, regional, national, or international educational need; (2) involve a creative or nontraditional approach toward addressing that need which can serve as a model to others; (3) encourage and facilitate better working relationships in the university science and education community, as well as between universities and the private sector, to enhance program quality and supplement available resources; and (4) result in benefits which will likely transcend the project duration and USDA support.

E. Eligibility

Proposals may be submitted by land-grant and other U.S. colleges and universities offering a baccalaureate degree or any other higher degree and having a demonstrable capacity for, and a significant ongoing commitment to, the teaching of food and agricultural sciences generally and to the specific need and/or subject area(s) for which a grant is requested. In addition, a grantee institution must meet the definition of a college or university as defined in 7 CFR 3405.2(f). An institution eligible to receive an award under this program includes a research foundation maintained by an eligible college or university.

F. Available Funds

CSREES anticipates that the amount available for project grants under this program in FY 1999 will be approximately $4,079,000. Awards will be based on merit evaluation of proposals by peer review panels and internal staff review.

G. Targeted Need Areas Supported

For FY 1999, proposals must address one or more of the following targeted need areas: (1) Curricula Design and Materials Development; (2) Faculty Preparation and Enhancement for Teaching; (3) Instruction Delivery Systems; and (4) Student Experiential Learning. A description of these targeted need areas can be found in the Scope of Program section at 7 CFR 3405.6. A proposal may address a single targeted need area or multiple targeted need areas, and may be focused on a single subject matter area or multiple subject matter areas, in any combination (e.g., curriculum development in horticulture; curriculum development, faculty enhancement, and student experiential learning in animal science; faculty enhancement in food science and agribusiness management; or instruction delivery systems and student experiential learning in plant science, horticulture, and entomology).

H. Degree Levels Supported

For FY 1999, proposals must be directed to undergraduate studies leading to a baccalaureate degree. For purposes of this program, proposals directed to the first professional degree in veterinary medicine also are allowable. Projects directed to the graduate level of study will not be supported.

I. Proposal Submission Limitations

There is no limit on the number of proposals any one institution may submit. In addition, there is no limit on the number of proposals which may be submitted on behalf of the same school, college, or equivalent administrative unit within an institution.

J. Project Duration

A regular, complementary, or joint project proposal may request funding for a project period of 18–36 months duration.

K. Matching Requirement

Each grant recipient under the Higher Education Challenge Grants Program is required to match the grant funds awarded on a dollar-for-dollar basis from a non-Federal source(s). The cash contributions towards matching from the institution should be identified in the column ''Applicant Contributions to Matching Funds'' of the Higher Education Budget, Form CSREES–713. The cash contributions of the institution and third parties as well as non-cash contributions should be identified on Line N., as appropriate, of Form CSREES–713 and described in the budget justification. Any cost-sharing commitments specified in the proposal will be referenced and included as a condition of an award resulting from this announcement.

L. Maximum Grant Amount

For a regular or complementary project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $100,000. (The total Federal contribution to the budget for a regular or complementary project proposal may not exceed $100,000.) For a joint project proposal, the maximum funds that may be requested from CSREES under this program to cover allowable costs during the project period are $250,000. (The total Federal contribution to the budget for a joint project proposal may not exceed $250,000.) Please refer to the Administrative Provisions for this program at 7 CFR 3405.2 for the definitions of regular, complementary, and joint project proposals. **Note:** These maximums are for the total duration of the project, not per year.

M. Limitation on Indirect Costs

Pursuant to section 1462 of NARETPA, 7 U.S.C. 3310, indirect costs charged against a grant may not exceed 19 percent of the total Federal funds provided under the grant award. An alternative method of calculation of this limitation is to multiply total direct costs by 23.456 percent.

N. Funding Limitations Per Institution

In FY 1999, there are no limits on the total funds that may be awarded to any one institution.

O. Maximum Number of Grants Per Institution

For FY 1999, a maximum of two grants may be awarded to any one institution under the Higher Education Challenge Grants Program. This ceiling excludes any subcontracts awarded to an institution pursuant to other grants issued under this program.

P. Other Limitations

For FY 1999, the applicant institution submitting a joint Challenge Grant proposal must transfer at least one-half of the awarded funds to the two or more other colleges, universities, community colleges, or other institutions assuming a major role in the conduct of the project. For FY 1999, the applicant institution submitting a joint Challenge Grant proposal must retain at least 30 percent of awarded funds to demonstrate a substantial involvement with the project.

Q. Evaluation Criteria

Section 223(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. No. 105–185, amended section 1417 of NARETPA to require that certain priorities be given in awarding grants for teaching enhancement projects under section 1417(b) of NARETPA. This program is authorized under section 1417(b). CSREES considers all applications received in response to this solicitation as teaching enhancement project applications. To implement the new priorities for proposals submitted for the FY 1999 competition, the evaluation criteria used to evaluate proposals, as provided in the Administrative Provisions for this program (7 CFR 3405.15), have been modified to include new criteria or extra points for proposals demonstrating enhanced coordination among eligible institutions and for proposals demonstrating enhanced coordination among eligible institutions and for proposals focusing on innovative, multidisciplinary education programs, material, or curricula.

Evaluation Criterion and Weight

(a) Potential for addressing a State, regional, national or international need: 65 points

This criterion assesses the potential of the project to add value by advancing the quality of food and agricultural sciences higher education and

producing graduates capable of strengthening the Nation's food and agricultural scientific and professional work force. This criterion includes the following elements: impact, innovation, multidisciplinary, expected products and results, and continuation plans.

(1) Impact—Does the project address a significant and clearly documented State, regional, multistate, national, or international need? Will the benefits to be derived from the project transcend the applicant institution and/or the grant period?

(2) Innovative and Multidisciplinary Focus—Does the project focus on innovative, multidisciplinary education programs, material, or curricula? Is the project based on a non-traditional approach toward solving a higher education problem? Is the project relevant to multiple fields in the food and agricultural sciences? Will the project expand partnership ventures among disciplines at a university?

(3) Products and results—Are the expected products and/or results of the project clearly explained? Will the project contribute to an improvement in the quality or diversity of the Nation's food and agricultural scientific and professional expertise base?

(4) Continuation plans—Are there plans for continuation or expansion of the project beyond USDA support? Are there indications of external, non-Federal support? Are there realistic plans for making the project self-supporting?

(b) Potential of submitting institution(s) to successfully complete project objectives: 70 points

This criterion assesses the soundness of the proposed approach, the adequacy of human and physical resources available to carry out the project, the institution's commitment to the project, partnerships and collaborative efforts involving all types of institutions, its cost-effectiveness, and the extent to which the total budget adequately supports the project.

(1) Proposed approach—Are the objectives achievable, logical, and based on review of literature? Is the plan of operation managerially, educationally, and/or scientifically sound? Is the overall plan integrated with or does it expand upon other major efforts to improve the quality of food and agricultural sciences higher education? Is the timetable realistic?

(2) Resources—Are there adequate institutional resources to carry out the project? Do the project personnel possess requisite expertise to complete successfully the project? Have personnel committed adequate effort to achieve stated objectives and anticipated outcomes? Will the project have adequate administrative support to carry out the proposed activities? Will the project have access to needed resources such as instrumentation, facilities, computer services, library, and other instruction support resources?

(3) Institutional commitment—Is there evidence to substantiate that the institution has a long term commitment to support the result(s) and/or product(s) produced by this project, that it will help satisfy the institution's high-priority objectives, or that the project is supported by the strategic plans?

(4) Coordination and partnership efforts—Will the project demonstrate enhanced coordination between the applicant institution(s) and other colleges and universities with food and agricultural science programs eligible for grants under this program? Will the project expand partnership ventures among eligible colleges and universities, or with the private sector, that are likely to enhance program quality or supplement resources available to food and agricultural sciences higher education? Will the arrangements for partner(s) and/or collaborator(s) enhance dissemination of the result(s) and/or product(s)?

(5) Budget and cost-effectiveness—Is the budget request justifiable? Are costs reasonable and necessary? Will the total budget be adequate to carry out project activities? Are the source(s) and amount(s) of non-Federal matching support clearly identified and appropriately documented? For a joint project proposal, is the shared budget for three or more institutions explained clearly and in sufficient detail? Is the proposed project cost-effective? Does it demonstrate a creative use of limited resources, maximize educational value per dollar of USDA support, achieve economies of scale, leverage additional funds or have the potential to do so, focus expertise and activity on a targeted need area, or promote coalition building for current or future ventures?

(c) Effectiveness of evaluation plan and potential for dissemination of the result(s) and/or products to other institutions and for utilization by other institutions: 65 points

This criterion assesses the adequacy of the evaluation strategy, the quality of outcome measures, the expertise and availability of human resources to conduct the evaluation, the record of the key personnel is disseminating advancements in education, e.g., publishing educational articles in peer reviewed journals, the adequacy of the plan for dissemination, and the potential for utilization by other institutions.

(1) Evaluation—Does the proposal contain a well-designed plan to evaluate results of the project? Will this plan provide conclusions suitable for convincing a peer review audience of the accomplishment? Does it allow for continuous and/or frequent feedback during the life of the project? Does the evaluation plan contain outcome measures? Are the outcome measures capable of assessing the quality and usefulness of project results and products? Are the individuals involved in project evaluation skilled in evaluation strategies and procedures? Can the outcome measures provide an objective evaluation? Is the outcome assessment designed in such a way that it can assist faculty at other institutions in deciding whether to use project results or products?

(2) Dissemination—Is there a commitment to submit the results of the project evaluation to peer review by the academic community in the food and agricultural sciences? Does the proposed project include clearly outlined and realistic mechanisms that will lead to widespread dissemination of project results, including national electronic communication systems, publications, presentations at professional conferences, and/or use by faculty development or research/teaching skills workshops?

(3) Utilization—Is it probable that other institutions will adapt the result(s) and/or product(s) of this project for their own use? Can the project serve as a model for others? If successful, is the project likely to lead to education reform? Is the product(s) and/or result(s) likely to provide a significant contribution to the advancement of higher education in the food and agricultural sciences? Are partner(s) and/or collaborator(s) committed to utilize the product(s) and/or result(s)?

R. How to Obtain Application Materials

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include the Administrative Provisions, forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048. When contacting the

Proposal Services Unit, please indicate that you are requesting forms for the FY 1999 Challenge Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1999 Challenge Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

S. What to Submit

An original and seven (7) copies of a proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½″ x 11″ white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. All copies of the proposal must be submitted in one package. Each copy of the proposal must be stapled securely in the upper left-hand corner (DO NOT BIND).

T. Where and When to Submit

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before March 9, 1999, at the following address: Challenge Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. mail must be received on or before March 9, 1999. Proposals submitted through the U.S. mail should be sent to the following address: Challenge Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. The telephone number is (202) 401–5048.

U. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

V. Intent To Submit a Proposal

For the FY 1999 competition, Form CSREES–711, ''Intent to Submit a Proposal,'' is requested for the Higher Education Challenge Grants Program and is due February 9, 1999. Applicants may either mail Form CSREES–711 to Higher Education Programs; Mail Stop 2251; CSREES–USDA; 1400 Independence Avenue, SW; Washington, DC 20250–2251; or fax Form CSREES–711 to the Higher Education Programs office at (202) 720–2030.

Done at Washington, D.C., this 30th day of December 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–361 Filed 1–7–99; 8:45 am]

BILLING CODE 3410–22–P

Friday
January 8, 1999

Part VII

Office of Personnel Management

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD); Notice

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense (DoD)

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Title VI of the Civil Service Reform Act, title 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub.L. 105–85), permits the Department of Defense (DoD), with the approval of OPM, to conduct a personnel demonstration project within the Department's civilian acquisition workforce and those supporting personnel assigned to work directly with the acquisition workforce. This demonstration project covers the civilian acquisition workforce and teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of which consist of supporting personnel assigned to work directly with the acquisition workforce, throughout DoD. The total number of participants is limited to 95,000.

DATES: Implementation of this demonstration project will begin by February 9, 1999, or earlier. Participating organizations will be phased into the project in accordance with the timetable approved by DoD and OPM in the project's implementation plan.

FOR FURTHER INFORMATION CONTACT: *DoD:* Richard M. Childress, Civilian Acquisition Workforce Personnel Demonstration, 5203 Leesburg Pike, Suite 1404, Falls Church, VA 22041, 703–681–6658. *OPM:* Gail W. Redd, U.S. Office of Personnel Management, 1900 E Street NW, Room 7460, Washington, DC 20415, 202–606–1521.

SUPPLEMENTARY INFORMATION:

1. Background

Title VI of the Civil Service Reform Act, 5 U.S.C. 4703, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85), permits DoD, with the approval of OPM, to conduct a personnel demonstration project within the Department's civilian acquisition workforce and those supporting personnel assigned to work directly with the acquisition workforce. This demonstration project covers the civilian acquisition workforce and teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of which consist of supporting personnel assigned to work directly with the acquisition workforce, throughout DoD. The Civilian Acquisition Workforce Personnel Demonstration Project is designed to provide an encouraging environment that promotes the growth of all employees and to improve the local acquisition managers' ability and authority to manage the acquisition workforce effectively. This demonstration involves streamlined hiring processes, broadbanding, simplified job classification, a contribution-based compensation and appraisal system, revised reduction-in-force procedures, expanded training opportunities, and sabbaticals.

2. Overview

On March 24, 1998, OPM published this proposed demonstration project in the **Federal Register** (63 FR 14253). During the 60-day public comment period ending May 26, 1998, OPM received comments from 182 individuals, including 37 who presented oral comments at one of the three public hearings. All comments were carefully considered.

Some commentors suggested changes to areas that lie outside the project's scope or the demonstration project authority of 5 U.S.C. chapter 47. These comments are not included in the summary below.

A number of commentors highlighted many instances of miscommunication and misunderstanding with the present system, as well as the project interventions. Others provided insight and encouragement to project developers. Still others emphasized the importance of training for all project participants.

The following summary addresses the comments received, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** notice. Most commentors addressed several topics, which were counted separately. Thus, the total number of comments exceeds the number of individuals cited above.

A. General Positive Comments

Thirty-nine commentors were totally supportive of the demonstration and saw it as beneficial to employees, managers, the acquisition workforce, and the Federal civil service. One commentor thanked DoD, OPM, and Congress for making this project possible, saying it would greatly benefit workers at field-level installations. Several commentors said it would provide much-needed reform of workforce management. Others complimented the project's streamlined personnel management systems and application of good business practices to Government. Finally, several commentors simply said they looked forward to the project's implementation and welcomed the opportunity to contribute to its success.

B. Contribution-based Compensation and Appraisal System (CCAS)

A number of positive comments were received. Three commentors welcomed pay adjustments based on their contributions. One said that pay pool panels will serve to ensure even-handed assessments and that poor performers ''can no longer milk the system.'' Two commentors viewed CCAS's varied contribution factors as a way to satisfy the increasing need for a multi-skilled workforce in a downsized environment. One commentor thought CCAS should be implemented immediately.

A total of 105 comments were received about CCAS, relating to seven subtopics, as follows.

(1) CCAS Process

Comments: Thirty-eight commentors thought the CCAS process was too complicated. Another said the Customer Relations factor seemed to emphasize customer satisfaction over statutory compliance, yet contract specialists must achieve both.

Response: At first reading, the CCAS process may seem complicated. However, feedback from numerous CCAS orientation and training sessions throughout DoD showed that participants readily grasped the new system's concepts.

Project developers have conducted and will continue to give briefings for management and the workforce across the country. Additionally, ''train-the-trainer'' courses have been completed so that the next lower echelon of trainers can spread the word. Evaluation of this training indicated that an understanding of the CCAS process and its benefits can easily be achieved.

Each participating manager will be fully trained on the CCAS process and supporting software well before the end of the first appraisal cycle. Additionally, training materials, videotapes, and briefing charts are available to participating organizations, as well as an Internet-based tutorial.

With respect to the Customer Relations factor, it is important to note that all six CCAS factors are critical factors. Accordingly, an employee would not be expected to violate controlling laws or regulations in an effort to fulfill this factor.

(2) Funds Availability and General Pay Increase

Comments: Eight commentors inquired about funds availability for contribution rating increases and awards. They also believed the cost of living increase should be excluded from the pay pool. Nine commentors believed that CCAS would harm teamwork and lead to excessive competition among employees (or between managers and employees) for a finite amount of funds within a pay pool. Several others asked what effect achieving comparability under the Federal Employees Comparability Act of 1990 (FEPCA) might have on CCAS.

Response: Regarding funds availability, the project establishes mandatory funding floors for pay pools, with which participating organizations must comply.

As a point of clarification, the annual GS pay adjustment authorized under 5 U.S.C. 5303 is based on the cost of labor, not the cost of living. This pay increment is linked to changes in a component of the Employment Cost Index (ECI) that measures the overall rate of change in employers' wage and salary costs in the private sector. Thus, this pay increment is appropriately included in the pay pools.

As to CCAS's effect on teamwork, ''Teamwork/Cooperation'' is one of the six CCAS factors on which participants will be rated. Employees in matrix-managed organizations, as well as those in functional organizations, will have the opportunity to work as a team to accomplish the mission of the organization.

Regarding FEPCA, notwithstanding any other provision of this demonstration project, if General Schedule employees receive an increase under 5 U.S.C. 5303 that exceeds the amount otherwise required by that section on the date of this notice, the excess portion of such increase shall be paid to demonstration project employees in the same manner as to General Schedule employees. The excess portion of such increase shall not be distributed through the pay pool process.

(3) Locality Pay

Comments: Several commentors disagreed with including locality pay in the pay pools.

Response: The commentors were apparently misinformed; locality pay is not included in pay pool funding. Demonstration project employees will continue to receive locality pay as they do now.

(4) CCAS Implementation

Comments: Three commentors suggested that overall contribution scores be related to the current system with an adjective rating. One commentor said special rates should continue in effect to attract quality personnel. Another said that all employees rated ''above the rails'' (i.e., in the ''A'' region) would be reduced in basic pay, which in turn would reduce their retirement annuities. Several objected to the terms ''overcompensated'' and ''undercompensated'' for employees rated above and below the rails, respectively.

Response: The project itself does not incorporate adjective ratings, but it does provide an adjective rating that corresponds to the current system for use when employees leave the demonstration project.

The project does not use special rates. However, increased opportunities for pay progression under broadbanding should more than offset this. Additionally, former special rate employees will now receive locality pay, for which they previously were ineligible. Managers will also have greater flexibility to set pay above the minimum rate of the range upon initial appointment and promotion under the demonstration's broadbanding system.

A fundamental purpose of CCAS is to compensate employees appropriately. However, employees rated in the ''A'' region are not automatically reduced in pay. Rather, the supervisor decides whether corrective action is needed. If so, as under the current system, the supervisor informs the employee in writing, and the employee is placed on an improvement plan that provides a reasonable opportunity to demonstrate acceptable contribution for the identified factors. Reduction in pay can occur only if the employee fails to complete the plan successfully.

Finally, CCAS terminology was changed to ''inappropriately compensated'' above or below the rails.

(5) Pay Pool Process

Comments: One commentor suggested that the project plan set forth criteria for establishing pay pools. One commentor thought the recommended upper limit for the number of employees in a pay pool (300) should be made mandatory. Four believed panels should include union representation. Three said that only the immediate supervisor should determine an employee's overall contribution score (OCS). Several commentors said pay pool results should be made available to employees.

Response: Pay pools will be established as determined by the participating DoD Components. The suggested size of pay pools ranges from 35 to 300 employees. Components have flexibility in this area in order to be able to tailor the pay pool process to meet their varied organizational needs.

Activities whose employees are represented by a union are encouraged to invite that union to participate in the pay pool process. The project plan and operating procedures have been modified to incorporate this feature.

Rather than relying on a single individual (the immediate supervisor), CCAS uses the pay pool panel process to ensure fairness and consistency in determining each employee's OCS.

Finally, pay pool managers are encouraged to convey the outcomes of the CCAS assessment process, in the aggregate, to employees within their pay pool. This may be done, for example, by providing to individual employees a scattergram depicting the OCS plot of the pay pool, both before and after salary adjustment, with only the individual's name shown on the scattergram. The software developed to support CCAS can provide this information.

(6) Overall Contribution Scores

Comments: Eight commentors believed CCAS would disadvantage current GS–15 employees at step 7 and above. Such employees would have to achieve near-perfect scores in all factors in order for their OCSs to fall between the rails (i.e., in the ''C'' region). These commentors believed the OCS methodology should be changed to

permit such employees' high achievement to be documented.

Response: The PAT adopted this comment and changed the scoring. A new score category of ''very high'' has been established for those at the top range of broadband level IV in the Business Management and Technical Management Professional career path. For consistency and as an outgrowth of this comment, scoring was similarly changed for the other two career paths.

(7) Appraisal Cycle

Comments: One commentor suggested that pay adjustments take effect the first pay period of September. Another thought the cutoff date for appraisals should be changed to August to allow more time for pay pool panel meetings.

Response: These comments were not adopted. Processing the CCAS and locality pay increases simultaneously in January will streamline administrative processes. The operating procedures set forth the steps necessary for pay pool panels to perform their tasks timely.

C. Management Issues

A number of positive comments were received. Seven commentors supported the demonstration because it gives management necessary flexibility, reduces administrative costs, enhances employees' career advancement, and improves personnel administration. Many commentors advocated the demonstration because it offers increased opportunity for them personally. Others viewed the project's compensation and hiring features as a way to attract and retain highly qualified personnel.

Additional comments on the management aspect of the demonstration may be divided into eight subtopics, as follows.

(1) Fairness

Comments: Thirty-eight commentors thought favoritism and the ''good old boy'' system would drive the demonstration and lead to inequitable treatment of employees. Several employees said managers would now determine their pay increases and, ultimately, their retirement annuities. Others said that monetary awards would be given to employees who do not challenge authority and are part of a favored clique.

Response: The demonstration establishes a structured, group review process to assess employees' contributions to the mission. This process is designed to reduce favoritism and promote fairness.

Specifically, the use of pay pool panels ensures that individual supervisors' ratings are reviewed by their peers (i.e., by other raters in the same pay pool) and by the supervisor of all raters in that pool. In addition, rated employees are rank-ordered by the entire pay pool panel. The intent here is not so much to require ranking per se as to ensure that inflation or deflation by any rater will be identified and corrected via the normal operation of the panel process. Finally, the pay pool manager (who is generally at a higher organizational level than all the above-mentioned supervisors) oversees and approves the results of the group review process.

A focused training session has been developed to teach supervisors and managers how to administer CCAS correctly. Additionally, a third-party evaluator continually collects data on project operation and monitors compensation trends, among other areas.

In summary, the pay pool panel process, managerial training, and continuing evaluation all guard against favoritism and promote fairness for employees under the demonstration.

(2) Managerial Preparedness

Comments: Three commentors thought current acquisition managers need preparation for the challenge of administering CCAS.

Response: A very robust training program will be provided for all supervisors and managers of demonstration participants so that they may gain confidence and competence in performing their duties.

(3) Waivers of Federal Civil Service Laws and Regulations

Comments: A number of commentors thought the **Federal Register** notice's list of waivers would diminish or eliminate employee protections.

Response: Waivers are an integral part of any Federal personnel demonstration project. Their purpose is to permit innovation, not to diminish employees' rights. A demonstration project is defined as—

> a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management (5 U.S.C. 4701(a)(4)).

Under 5 U.S.C. chapter 47, OPM is permitted to waive civil service laws and regulations to enable an agency, such as DoD, to conduct demonstration projects by experimenting with new and innovative personnel systems. Examples of laws and regulations that may be waived for demonstration purposes include methods of: appointment to positions; classification and compensation; assignment, reassignment, or promotion; and providing incentives. However, no waivers of law are permitted in the areas of employee leave, employee benefits, equal employment opportunity, political activity, merit system principles, or other prohibited personnel practices.

To sum up, the Civilian Acquisition Workforce Personnel Demonstration is conducted jointly by DoD and OPM. Its innovations require waivers of various civil service laws and regulations.

(4) Work Assignments

Comments: Thirty-two commentors raised the possibility of favoritism in work assignments. They said managers could assign high-visibility tasks to certain employees and lower-level work to others, with predictable results when employees were compensated for their contributions. However, another commentor said this was possible under the current compensation system; it would remain so regardless of what system was implemented.

Response: Management will continue to determine work assignments. However, under the demonstration, work assignments will increasingly focus on supporting mission requirements, enhancing employees' capabilities, and providing employees with opportunities for career broadening and training.

Employees are responsible to ensure that management understands their capabilities and their desire to increase their contributions to the organization's mission. Employees should respond to work assignment opportunities in a proactive, rather than reactive, manner. Under the project, managers and employees can arrive at mutually agreeable opportunities to increase contributions to the organization's mission.

(5) Exercise of Managerial Authority

Comments: Seven commentors said managers could abuse their authority regarding employees' pay raises. For instance, managers who are engineers might view only other engineers as high contributors.

Response: Several project features help ensure visibility for all employees and fair assessment of both technical and functional contributions. In this regard, each of the six CCAS factors has multiple levels of increasing contribution corresponding to the broadband levels. Each factor contains descriptors for each respective level within the relevant career path. The

descriptors state what is important to the mission of the organization and describe employees' contributions at different broadband levels. Thus, work performed by individuals in a particular career path is evaluated against the same descriptors, and contribution is determined by a group consensus through the pay pool panel process.

(6) Dual Personnel Systems

Comments: Five commentors projected additional workload for supervisors and civilian personnel/human resources staffs as a result of maintaining two personnel systems.

Response: The FY 96 National Defense Authorization Act encouraged DoD to conduct a demonstration project for the acquisition workforce. In an effort to minimize the need for two personnel systems within this workforce, project developers made every effort to encourage eligible organizations and unions to participate.

There is precedent for operating dual personnel systems. Seven science and technology laboratory demonstration projects are already in operation within the Military Services. Most of these projects do not include all employees within a demonstration organization.

(7) Leadership/Supervision Factor

Comments: Seven commentors thought this factor did not emphasize safety and health, equal employment opportunity (EEO), etc. Some asked how employees' movement through the broadbands related to existing affirmative action (AA) goals.

Response: Nothing in this project waives safety, health, or equal employment opportunity principles. Managers will apply existing principles appropriately in determining employees' overall contribution scores for this factor. A statement which specifically addresses these concerns has been added to all career paths for the Leadership/Supervision factor.

The demonstration is not intended to alter existing equal employment opportunity or affirmative action programs. Part of the project's intended cultural change, however, is to think in terms of broadband levels in lieu of GS grades. As a result, participating DoD components and activities may adjust their affirmative action plans and goals to accommodate broadband levels.

Finally, through the project's evaluation process, trends will be identified. Any adverse trends may result in modifications to the ongoing demonstration project in those areas.

(8) Participation in the Project

Comments: Twelve commentors questioned their own participation in the project. Some engineers wanted to be included, while several interns did not.

Response: The respective DoD Components decided whether or not to participate. Each Component determined which organizations—and which positions within those organizations—would participate.

D. Broadbanding

A number of positive comments were received. Many commentors said broadbanding, with its seamless progression through the rate range, would be very beneficial to employees.

Additional comments received on this aspect of the personnel demonstration project were related to three subtopics, as follows.

(1) Broadband Structure

Comments: A number of commentors asked why particular grades were grouped into a given broadband and recommended changes. Two commentors wanted one broadband for all 15 GS grades, while others said they did not want to be placed in the same broadband with lower graded employees. One commentor suggested that broadbands be adjustable locally to suit a particular workforce. Additionally, several commentors said employees at the top of a broadband would lack potential for basic pay progression. Finally, two commentors raised an issue about promotions under broadbanding.

Response: When grouping GS grades into broadbands, project developers sought input from various sources, including other demonstrations, DoD, and OPM. Developers then identified natural breakpoints within a grouping of similar duties and responsibilities and used the breakpoints to determine broadband structure. (For instance, in most participating organizations, the journeyman level lies at GS–12 and 13 for the Business Management and Technical Management Professional career path. Hence, these two grades were combined into one broadband. Similarly, since GS–14s and 15s are generally the management core of an organization, it was logical to group these two grades into one broadband.) A standard broadband structure throughout the demonstration will ensure project integrity and facilitate project evaluation.

Some employees in the project will be paid at the maximum rate for a broadband level, just as some are now at step 10 of a GS grade. Most such employees will be able to compete for promotion to a higher broadband and be eligible for contribution awards. A significant advantage of the project for all employees is that it sets aggregate funding thresholds for these awards, whereas under the current system, no similar funds are guaranteed.

Under broadbanding, employees have greater advancement opportunities across a broad range of salary rates. Competitive promotion will continue to be required between broadbands, but most salary advancement will take the form of contribution rating increases.

(2) Occupational Series

Comments: Some commentors thought it was important to maintain the integrity of career fields, given that different occupational series are being combined into a given career path. Some commentors said the project included too many series, but others pointed out that it did not include all series in the acquisition and support workforce.

Response: Occupational series will remain in effect, and existing requirements for education and experience will be maintained. Degree or other specific requirements (including DAWIA certification) that now exist for certain occupations will be unchanged. Table 2 was amended to include all occupational series involved in the acquisition process, to include the support workforce.

(3) Contribution-Based Actions

Comments: Several commentors sought to ensure that contribution-based actions would be well-founded and reviewable by the Merit Systems Promotion Board.

Response: Contribution-based actions must meet the same standard of evidence as performance-based actions under the current system and are reviewable by the Board.

E. Academic Degree and Certificate Training

Eleven comments were received about this initiative, nine of them positive.

Comments: Commentors appreciated the new ability for Administrative Support and Technical Management Support employees to pursue educational opportunities. They also supported extending the time for degree and certificate training throughout the project's duration. This initiative will help attract the next-generation worker, they said.

Two commentors criticized DoD's paying for employees' education and then not capitalizing on its investment.

Response: Management and employees must work together to structure work assignments that take advantage of employees' skills and education.

F. Classification

Twenty-two comments regarding two subtopics were received about this initiative.

(1) Classification Process

Comments: Under the demonstration, position requirements documents (PRDs) combine position information, staffing requirements, and contribution expectations into a single document that replaces current agency-developed position description forms. Several commentors sought accurate PRDs that can capture unique position characteristics. While one commentor thought writing PRDs was burdensome, two others differed, saying they saw the value in a simplified process that reduces administrative costs and processing times. Two commentors asked how PRD factors relate to broadband levels, and two others asked who would approve PRDs. Several commentors wanted assurance that line managers will be prepared to assume classification authority.

Response: COREDOC, an interactive software program designed for development of PRDs, will be available to assist managers, along with training on classification. Unique position characteristics may be annotated in the PRDs' remarks section. Classification authority rests with the local commander and may be re-delegated no lower than one management level above the first-line supervisor of the employee or position under review. Personnel specialists will provide on-going consultation and guidance to managers and supervisors throughout the classification process.

(2) Classification Appeals

Comments: One commentor suggested setting time frames to process classification appeals. Several said the accuracy of PRDs should be appealable.

Response: The project does not change existing time frames for classification appeals. As under the current system, employees may not appeal the accuracy of a PRD, but instead may raise the issue under an applicable grievance procedure.

G. Reduction-in-Force (RIF)

The 38 comments about this initiative centered on four items.

(1) Definition of Competitive Area

Comments: Eighteen commentors wanted the same competitive area to cover project and non-project employees.

Response: Project developers seriously reconsidered the matter of competitive areas, and two mock RIFs were subsequently run. This exercise compared a scenario with an entire workforce in the same competitive area against a second scenario with separate competitive areas for project and non-project employees. The overall difference in outcome between the two mock RIFs was negligible. However, the demonstration and the standard title 5 personnel systems are very different with respect to their classification, compensation, and performance management/contribution programs. The same-area scenario proved inadequate to accommodate those differences when employees were moved via RIF between the two systems. Additionally, project developers sought input from other demonstration projects, DoD, and OPM. All of these supported the separate-areas concept. Accordingly, the project plan was amended to specify that employees under this demonstration shall be placed in a different competitive area from those who are not covered.

(2) Retention Rights

Comments: Other commentors said the project should not diminish retention of employees.

Response: The project's procedures are not intended to diminish retention. Under the current system, employees may only retreat to positions they have previously held. The project eliminates this restriction. If qualified for the position in question, a project employee may displace any other project employee with a lower retention standing.

(3) DoD Downsizing; Base Re-alignment and Closure (BRAC)

Comments: Five commentors raised the issue of conducting a demonstration in times of downsizing and BRAC.

Response: The project has no influence over downsizing or BRAC determinations. However, it does represent a valuable opportunity to enhance the quality, professionalism, and management of the DoD acquisition workforce through an improved human resources management system. The FY 96 and 98 National Defense Authorization Acts encouraged DoD to conduct this demonstration and established a 1999 time frame to commence implementation.

(4) Years of Retention Service Credit

Comments: Several commentors noted that the years of retention service credit in Table 7 were not consistent with OCS scores in the ''inappropriately compensated-below the rails'' (B) region.

Response: Table 7 was constructed in relation to the OCS normal range. Generally, employees whose OCSs fall within or above the top third of the OCS normal range for their career path and broadband level receive 20 years of retention service credit; those in the middle third, 16 years; and those in the lower third, 12 years. However, this breakout varies somewhat for broadband level I of each career path in order to accommodate the fact that the bottom of the OCS normal range for level I is zero.

H. Veterans' Issues

Ten commentors said that veterans' entitlements were being eroded.

Comments: Most of these commentors thought veterans were not treated fairly under this project. Specifically, they said, disabled veterans are at a disadvantage in scientific, engineering, and professional positions; veterans serving during peacetime are not treated fairly; and reduction-in-force rights for 5-point veterans are not specifically addressed when they are in the same broadband level with non-veterans. One commentor wanted to eliminate veterans' preference entirely during the hiring process, and another recommended a tie-breaking method or statement regarding current pass-over procedures.

Response: All current veterans' preference entitlements have been and will be protected throughout the duration of this demonstration project; none have been eroded. DoD operating procedures give specific instructions about honoring veterans' preference during hiring and reduction in force.

I. Sabbaticals

Seven comments were received on this initiative; six were positive.

Comments: One commentor saw no real change from the current system, but the remainder supported this initiative's availability to all project participants, saying it especially benefits those who have never been in a manufacturing or industrial environment. One commentor asked whether academia, industry, or the parent organization was responsible for funding sabbaticals.

Response: Under the current system, sabbaticals are available only to members of the Senior Executive Service. The demonstration expands this feature to all project employees.

The parent organization is responsible for funding this initiative.

J. Voluntary Emeritus Program

Nine comments were received regarding this initiative, addressing three subtopics.

(1) Positive Response

Comments: The commentor saw this program as an opportunity for the Government to benefit from highly qualified personnel who would provide their experience, judgment, and expertise on a voluntary basis.

(2) Effect on Permanent Employment

Comments: Four commentors said this initiative would reduce permanent employment. One saw it as a way to induce senior employees to retire and then return to work without appropriate compensation.

Response: The intent of this initiative is to afford retirees (primarily professionals in the Business Management and Technical Management Professional career path) an opportunity to return as a volunteer mentor. The project plan very clearly states that, ''This program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the mission of the command.''

(3) Unfair Labor Practice

Comments: Four commentors said this program could be used inappropriately to obtain free labor and constitutes an unfair labor practice.

Response: A personnel policy and legal review of the project plan during the coordination process determined that this initiative is lawful and appropriately administered.

K. Factors and Weights

Three comments were received in this area.

Comments: Some commentors said that the factors, discriminators, and descriptors used to evaluate employees' contributions were too general and not meaningful. Another thought technical competency should be addressed in the Business Management and Technical Management Professional career path.

Response: The six factors are inherent in every job and form the framework for evaluating employees' contributions. Technical competency, while not a separate factor, is encompassed in the Problem Solving factor. The descriptors for the four broadband levels identify increases in scope, complexity, independence, and creativity. Employees must have a sufficient degree of technical competency at all broadband levels in order to solve the problems presented to them. Thus, the level at which they solve problems permits an assessment of their technical competency.

Dated: December 28, 1998.

Janice R. Lachance,

Director, Office of Personnel Management.

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I. Executive Summary

The project was designed by a Process Action Team (PAT) under the authority of the Under Secretary of Defense for Acquisition and Technology, with the participation of and review by DoD and the Office of Personnel Management (OPM). The purpose of the project is to enhance the quality, professionalism, and management of the DoD acquisition workforce through improvements in the efficiency and effectiveness of the human resources management system. The project interventions will strive to achieve the best workforce for the acquisition mission, adjust the workforce for change, and improve workforce quality. The project framework addresses all aspects of the human resources life-cycle model.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD acquisition can be enhanced by allowing greater managerial control over personnel processes and functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system This demonstration project will provide managers, at the lowest practical level, the authority, control, and flexibility they need to achieve quality acquisition processes and quality products. This project not only provides a system that retains, recognizes, and rewards employees for their contribution, but also supports their personal and professional growth.

B. Problems With the Present System

One of the goals of the Defense Acquisition Workforce Improvement Act (DAWIA) is to create well-trained, multi-skilled professionals who can effectively manage multi-million-dollar programs. Additionally, Integrated Product Teams (IPTs) require multi-skilled personnel who can function in a dynamic team environment. The current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit these characteristics and who increase their contribution to the acquisition mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources and unnecessarily detract attention from the acquisition mission. Managers must be able to compete with the private sector for the best talent and be able to make timely job offers to potential employees. Those same managers need the tools to reward employees for excellence so that the acquisition systems produced reflect the quality of such a workforce. A contribution-based compensation system will help managers acquire these tools and provide a forum in which to apply them. The acquisition process is continually changing and is moving more toward a team environment; therefore, managers must be given local control of positions and their classification in order to move employees freely within their organization when demanded by the mission, and to provide developmental opportunities for employees. Additionally, managers have only limited tools to shape the workforce to ensure continued growth of new ideas, perspectives, and state-of-the art skills for the 21st century. In summary, today's acquisition workforce management problems appear to be

largely outside the control of the acquisition managers. The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the organizations, result in a workforce that cannot posture itself for the rapidly changing technological and business environment. Also, the current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the organization and the mission. This demonstration is designed to provide an encouraging environment that promotes the growth of all employees and to improve the local acquisition manager's ability and authority to manage the acquisition workforce effectively.

C. Changes Required/Expected Benefits

This project will demonstrate that a human resources system tailored to the mission and needs of the DoD acquisition workforce will result in: (a) Increased quality in the acquisition workforce and the products it acquires; (b) increased timeliness of key personnel processes; (c) workforce data trends toward higher retention rates of ''excellent contributors'' and separation rates of ''poor contributors''; (d) increased satisfaction of serviced DoD customers with the acquisition process and its products; and (e) increased workforce satisfaction with the personnel management system.

The DoD acquisition workforce demonstration program builds on the features of demonstration projects at the Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the DoD acquisition workforce demonstration project will result in more satisfied employees as a consequence of the demonstration's pay equity, classification accuracy, and fairness of performance management. A full range of measures will be collected during project evaluation.

D. Bargaining Requirements

Employees within a unit to which a labor organization is accorded exclusive recognition under Chapter 71 of title 5, United States Code, shall not be included as part of the demonstration project unless the exclusive representative and the agency have entered into a written agreement covering participation in and implementation of this project. The parties may use mediation or any other mutually acceptable means to resolve disputes over the implementation of the project with respect to unit employees. Neither party may request the assistance of the Federal Service Impasses Panel to resolve such disputes.

Either labor or management may unilaterally withdraw from negotiations over the application of this demonstration project to bargaining unit members at any time up until final agreement approval, without such action being considered an unfair labor practice under Section 7116 of title 5, United States Code for refusing to negotiate in good faith.

Written agreements addressing the initial implementation of the demonstration project to bargaining unit members are subject to higher-level review and approval within DoD prior to implementation. This review is to ensure local agreements comply with the requirements of the demonstration project and any Service-wide implementing directives. The decision of the higher-level review is not subject to third-party intervention or review. Written agreements established under this paragraph shall be considered ''local agreements subject to a national or controlling agreement at a higher level'' as provided in 5 U.S.C. 7114(c)(4), and the approved demonstration project shall be considered a ''national agreement'' under that section.

Once a written agreement is reached and approved allowing for the local implementation of the project, all subsequent negotiations during the life of the project shall be subject to binding impasse procedures under Section 7119 of title 5, United States Code, or to alternative impasse procedures agreed to by the parties.

E. Participating Organizations

The DoD Acquisition Workforce Personnel Demonstration Project will include various organizational elements of the Air Force, Army, Navy, Marine Corps, and the Office of the Under Secretary of Defense (Acquisition and Technology). Participating organizations are shown in Table 1.

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TABLE 1- PARTICIPATING ORGANIZATIONS

	Air Force	
Command	**Organization/Office Symbol**	**Locations**
AFMC	Air Force Flight Test Center (AFFTC)	Edwards AFB, CA.
AFMC	95 Air Base Wing	Edwards AFB, CA.
AFMC	412 Test Wing	Edwards AFB, CA.
AFMC	452, Det 2	Kirtland AFB, NM.
AFMC	**Operating Locations**	
AFMC	412 TW, OL 00AB (EW)	AF Plant 04, TX.
AFMC	412 Log Gp, Det 00AA (LGLL-5C, LGLL-8, LGLL-1 LGLL-13, LGLL-16, LGLL-17	Wright-Patterson AFB, OH
AFMC	412 Test Sq, Det 00AB (LGLL-5A)	Long Beach, CA.
AFMC	412 Test Sq, Det 00AB (LGLL-2)	AF Plant 04, TX.
AFMC	412 Log Spt Aq, Det 00AA (LLL-1, LGLL-11)	Seattle, WA.
AFMC	412 Test Sq, Det 00AE (LGLL-6, LGLL-6A)	Hurlburt Field, FL.
AFMC	412 Test Sq, Det 00AF (LGLL-9A)	Tinker AFB, OK.
AFMC	412 Test Sq, Det 00AI (LGLL-4)	Whiteman AFB, MO.
AFMC	Air Armament Center (AAC) (Except 96 ABW and 377th Wing (KAFB))	Eglin AFB, FL.
AFMC	Air Armament Center (AAC) (Only 46TG)	Holloman AFB, NM.
AFMC	Aeronautical Systems Center (ASC) (All except 88ABW, 74 MED GRP; includes 88 AABW/FMPM and PKW)	Wright-Patterson AFB, OH
AFMC	Aeronautical Systems Center (ASC) (All except RA)	Palmdale AF Plan, CA.
AFMC	Aeronautical Systems Center (ASC)	Patuxent River, MD.
AFMC	Aeronautical Systems Center (ASC)	Arlington, VA.
AFMC	Headquarters, Air Force Materiel Command (HQ AFMC) Organizations included: Acquisition Directorate (HQ AFMC/AQ); Requirements Directorate (HQ AFMC/DR); Test and Operations Directorate (HQ AFMC/DO); Engineering Directorate (HQ AFMC/EN); Information and Communications Directorate (HQ AFMC/SC)	Wright-Patterson AFB, OH
AFMC	Electronic Systems Center (ESC) All Acquisition and ABW. Note: Excludes Materiel Systems Group (MSG), Standard Systems Group (SSG), 38th Engineering Inst. Wing (EIW) and Cryptologic Systems Group (CPSG)	Hanscom AFB, MA.

AFMC	Space Missile Center (SMC) 61ABG, 61 CS, 61 MDS, 61 SFS, SMC/CC, BC, HO, IG, IN, JA, MQ, PA, AX, FM, PK, XR, AD, CI, CL, CW, CZ, MC, MT, MV. Note: Exclude occupational series 0083 for all SMC organizations.	Los Angeles AFB, CA.
AFMC	SMC – Det 8/CC, CL, CW, PK, AX	Cape Canaveral AFB, FL.
AFMC	SMC – Det 11/CC, CW, TE, TM, AX	Vandenberg AFB, CA.
AFMC	SMC – SMC/CWO (Formerly Det 2)	Onizuka, CA.
AFMC	SMC – SMC/PK, TE, TM, AX	Kirtland AFB, NM.
AFMC	SMC /TE	Houston, TX.
AFMC	SMC/XR	Washington, DC.
AFMC	SMC – Det 11/CC/AP, FM, PK, RM, AX, CI, CW, CZ, MC, MT	Peterson AFB, CO.
AFMC	Operating Location (AC/HA) AD, CW, CZ, TE, AX	Schriever AFB, CO.
Secretary of the Air Force	Assistant Secretary of the Air Force (Acquisition) (SAF/AQ and subordinate organizations)	Pentagon, VA.

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Note:

- AFMC/SMC/DET11/Peterson AFB: DET 11 was realigned from HQ AFMC, June 98
- AFMC/SMC/Washington DC: Based on a realignment, deleted SMC/AX and changed to SMC/XR
- AFMC/SMC/Schriever AFB: Realigned from HQ AFMC, Jun 98
- AFMC/SMC/Los Angeles AFB: TE (newly established organization); 61SFS realigned/established Aug 98; change 66 ABG to 61 ABG (was a typo)

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	Army	
Command	**Organization/Office Symbol**	**Locations**
Army Acquisition Executive Support Agency (AAESA)	Headquarters, RDAISA, Contract Support Agency (CSA), Acquisition Career Management Office, Army Digitization Office (ADO), Leavenworth Support, Management Support Training Group, Element Redstone Arsenal, Element Ft. Huachuca, Element Rock Island, Element Aberdeen Proving Ground, Element Warren, Element Ft, Monmouth, Element Picatinny, Element Whitesands Missile Range, NM.	Ft. Belvoir, VA; Radford, VA; Pentagon, VA; Falls Church, VA; Arlington, VA; Ft Leavenworth, KS; Redstone Arsenal, AL; Ft. Huachuca, AZ; Rock Island, IL; Aberdeen Proving Ground, MD; Warren, MI; Ft. Monmouth, NJ; Picatinny, NJ; Whitesands Missile Range, NM.
AAESA	PEO Command, Control and Communication Systems (C3S), includes all associated PM's and Liaison Representatives	Ft. Monmouth, NJ; Pentagon, VA; Ft. Belvoir, VA; Huntsville, AL; Ft. Wayne, IN; McLean, VA; Fullerton, CA; San Diego, CA.
AAESA	PEO Ground Combat Support Systems (GCSS), includes all associated PM's and Liaison Representatives	Picatinny Arsenal, NJ; Warren, MI; Pentagon, VA; Minneapolis, MN; Ft. Sill, OK; Azuza, CA.

	Army	
AAESA	PEO Standard Army Management Information Systems (STAMIS), includes all associated PM's and Liaison Representatives	Ft. Belvoir, VA; Ft. Monroe, VA; Ft. Knox, KY; Ft. Monmouth, NJ; Ft. Lee, VA.
AAESA	PM-Joint Program for Biological Defense	Falls Church, VA; Ft. Detrick, MD; Aberdeen Proving Ground, MD.
AAESA	PEO IEW&S, includes all associated PM's and Liaison Representatives	Ft. Monmouth, NJ; Ft. Belvoir, VA; Huntsville, AL; Wright-Patterson AFB, OH; Brussels, Belgium.
Medical Command (MEDCOM)	US Army Medical Command (MEDCOM)/MCAA	Honolulu, HI; Seattle, WA; El Paso, TX; San Antonio, TX; Augusta, GA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Director of Assessment and Evaluation (SARD-ZD)	Pentagon, VA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary of the Army for Procurement (SARD-ZP)	Falls Church, VA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary for Plans/Programs/Policy (SARD-ZR)	Radford, VA; Pentagon, VA; Ft. Belvoir, VA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy for Systems Management (SARD-ZS)	Pentagon, VA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Deputy Assistant Secretary for Research and Technology (SARD-ZT)	Pentagon, VA.
Ofc Asst. Secy. of Army (Research, Development & Acquisition)	Management Support; SACO	Pentagon, VA.
8th Army	US Army Contracting Command Korea/EAKC	Seoul, Korea.
US Army Operational Test and Evaluation Command (OPTEC)	HQ, OPTEC	Alexandria, VA.
US Army Operational Test and Evaluation Command (OPTEC)	OPTEC Contracting Activity (OCA)	Ft. Hood, TX.
US Army Operational Test and Evaluation Command (OPTEC)	Operational Evaluation Command (OEC)	Alexandria, VA.
US Army Operational Test and Evaluation Command (OPTEC)	Evaluation Analysis Center (EAC)	Aberdeen Proving Ground, MD.

Army		
Headquarters Department of the Army (HQDA)	Defense Supply Services Washington (DSSW)/JDSS-W	Washington, DC; Ft. Belvoir, VA; Alexandria, VA; Falls Church, VA; Arlington-Crystal City, VA; Pentagon, VA.
National Guard Bureau	PEO/PM RCAS, NGB-RCS-RA	Newington, VA.
Military Traffic Management Command	MTAQ	Falls Church, VA.

Navy		
Command	**Organization/Office Symbol**	**Locations**
Assistant Secretary of the Navy (Research, Development and Acquisition)	ASN(RD&A)	Arlington, VA.
Navy International Program Office	NIPO	Arlington, VA.
NAVSUP	Fleet and Industrial Supply Center, Puget Sound	Bremerton, WA.
NAVSUP	Fleet and Industrial Supply Center	San Diego, CA.
Naval Sea Systems Command (NAVSEA)	TEAM CX	Arlington, VA.

Marine Corps		
Command	**Organization/Office Symbol**	**Locations**
Marine Corps Systems Command	Amphibious Vehicle Test Branch (AVTB)	Camp Pendleton, CA.
Marine Corps Systems Command	MARCORSYSCOM	Quantico, VA; Warren, MI; Albany, GA; Picatinny Arsenal, NJ; Rock Island, IL.
Marine Corps Systems Command	Marine Corps Tactical Systems Support Activity-(MCTSSA)	Camp Pendleton, CA.

DoD		
Command	**Organization/Office Symbol**	**Locations**
Under Secretary of Defense (Acquisition and Technology)	DSB; Spec. Prog.; DDR&E; ATSD(NCB); DUSD(ES); DUSD(AR); DUSD(AT); DUSD(L); DUSD(IA&I); DUSD(I&CP); SADBU; DIR,API; DIR,TSE&E; DIR,S&TS; DIR,DP; DIR, ADMIN	Pentagon, VA.

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F. Participating Employees

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within the DoD acquisition workforce and the teams of personnel, more than half of which consist of members of the acquisition workforce and the remainder of supporting personnel assigned to work directly with the acquisition workforce, as well as the need for adequate development and testing of the Contribution-based Compensation and Appraisal System (CCAS). Additionally, current DoD human resources management design goals and priorities for the entire civilian workforce were considered.

While the intent of this project is to provide DoD activities with increased control and accountability for their covered workforce, the decision was made to restrict development efforts initially to covered General Schedule (GS) positions. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

Interns assigned to an organization participating in this demonstration may be included, as determined by their organizations or components.

Employees in the Student Temporary Employment Program (summer hire and stay in school), all positions designated as primary or secondary law enforcement officer (LEO) positions (5 U.S.C. 5541(3)), and all positions in the Defense Civilian Intelligence Personnel System (DCIPS) (10 U.S.C. Chapter 83) are excluded from the demonstration project, even if their organizations and series are listed in Tables 1 and 2. Additionally, this demonstration project does not cover those positions that have previously been identified for coverage by a science and technology reinvention laboratory demonstration project, or the permanent demonstration project at the Naval Command, Control, and Ocean Surveillance Center, San Diego, CA and the Naval Air Warfare Center, Weapons Division, China Lake, CA.

The job series included in the project are identified in Table 2. To determine if your organization and series are included, locate your organization in Table 1 and then find your job series in Table 2. Additional questions, if any, regarding your specific position should be addressed to the OSD Acquisition Workforce Personnel Demonstration Project Office.

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TABLE 2 - SERIES INCLUDED IN THE DoD ACQUISITION WORKFORCE PERSONNEL DEMONSTRATION PROJECT

BUSINESS MANAGEMENT & TECHNICAL MANAGEMENT PROFESSIONAL	
SERIES NUMBER	**SERIES TITLE**
0011	BOND SALES PROMOTION
0018	SAFETY AND OCCUPATIONAL HEALTH MANAGEMENT
0020	COMMUNITY PLANNING SERIES
0023	OUTDOOR RECREATION PLANNING
0025	PARK RANGER
0028	ENVIRONMENTAL PROTECTION SPECIALIST
0030	SPORTS SPECIALIST
0050	FUNERAL DIRECTING
0062	CLOTHING DESIGN
0072	FINGERPRINT IDENTIFICATION
0080	SECURITY ADMINISTRATION
0095	FOREIGN LAW SPECIALIST
0099	GENERAL STUDENT TRAINEE
0101	SOCIAL SCIENCE
0106	UNEMPLOYMENT INSURANCE
0110	ECONOMIST
0130	FOREIGN AFFAIRS
0131	INTERNATIONAL RELATIONS SERIES
0135	FOREIGN AGRICULTURAL AFFAIRS
0136	INTERNATIONAL COOPERATION
0140	MANPOWER RESEARCH AND ANALYSIS
0142	MANPOWER DEVELOPMENT
0150	GEOGRAPHY
0156	ART SPECIALIST
0160	CIVIL RIGHTS ANALYSIS
0170	HISTORY
0180	PSYCHOLOGY
0184	SOCIOLOGY
0185	SOCIAL WORK
0188	RECREATION SPECIALIST
0190	GENERAL ANTHROPOLOGY
0193	ARCHEOLOGY
0199	SOCIAL SCIENCE STUDENT
0201	PERSONNEL MANAGEMENT
0205	MILITARY PERSONNEL MANAGEMENT SERIES
0212	PERSONNEL STAFFING SPECIALIST
0221	POSITION CLASSIFICATION
0230	EMPLOYEE RELATIONS
0233	LABOR RELATIONS
0235	EMPLOYEE DEVELOPMENT
0241	MEDIATION
0243	APPRENTICESHIP AND TRAINING
0244	LABOR MANAGEMENT RELATIONS EXAMINING SERIES
0246	CONTRACTOR INDUSTRIAL RELATIONS
0249	WAGE AND HOUR COMPLIANCE
0260	EQUAL EMPLOYMENT OPPORTUNITY
0270	FEDERAL RETIREMENT BENEFITS
0299	PERSONNEL MANAGEMENT STUDENT TRAINEE SERIES
0301	MISCELLANEOUS ADMINISTRATION AND PROGRAM

0334	COMPUTER SPECIALIST
0340	PROGRAM MANAGEMENT
0341	ADMINISTRATIVE OFFICER
0343	MANAGEMENT AND PROGRAM ANALYSIS
0346	LOGISTICS MANAGEMENT
0360	EQUAL OPPORTUNITY COMPLIANCE
0391	TELECOMMUNICATIONS
0399	ADMINISTRATION AND OFFICE SUPPORT STUDENT TRAINEE
0401	GENERAL BIOLOGICAL SCIENCE
0403	MICROBIOLOGY
0405	PHARMACOLOGY
0406	AGRICULTURAL EXTENSION
0408	ECOLOGY
0410	ZOOLOGY
0413	PHYSIOLOGY
0414	ENTOMOLOGY
0415	TOXICOLOGY
0430	BOTANY
0434	PLANT PATHOLOGY
0435	PLANT PHYSIOLOGY
0436	PLANT PROTECTION AND QUARANTINE SERIES
0437	HORTICULTURE
0440	GENETICS
0454	RANGE CONSERVATION
0457	SOIL CONSERVATION
0460	FORESTRY
0470	SOIL SCIENCE
0471	AGRONOMY
0475	AGRICULTURAL MANAGEMENT
0480	GENERAL FISH AND WILDLIFE ADMINISTRATION SERIES
0482	FISHERY BIOLOGY
0485	WILDLIFE REFUGE MANAGEMENT
0486	WILDLIFE BIOLOGY
0487	ANIMAL SCIENCE
0493	HOME ECONOMICS
0499	BIOLOGICAL
0501	FINANCIAL ADMINISTRATION AND PROGRAM
0505	FINANICIAL MANAGEMENT
0510	ACCOUNTING
0511	AUDITING
0512	INTERNAL REVENUE AGENT
0560	BUDGET ANALYSIS
0599	FINANCIAL MANAGEMENT STUDENT TRAINEE
0601	GENERAL HEALTH SCIENCE
0602	MEDICAL OFFICER
0610	NURSE
0630	DIETICIAN AND NUTRITIONIST
0631	OCCUPATIONAL THERAPIST
0633	PHYSICAL THERAPIST
0635	CORRECTIVE THERAPIST
0637	MANUAL ARTS THERAPIST
0639	EDUCATIONAL THERAPIST
0660	PHARMACIST

0662	OPTOMETRIST
0665	SPEECH PATHOLOGY AND AUDIOLOGY
0668	PODIATRIST
0671	HEALTH SYSTEMS SPECIALIST
0680	DENTAL OFFICER
0690	INDUSTRIAL HYGIENE
0699	MEDICAL AND HEALTH STUDENT TRAINEE
0701	VETERINARY MEDICAL SCIENCE
0799	VETERINARY STUDENT TRAINEE
0801	GENERAL ENGINEERING
0803	SAFETY ENGINEERING
0804	FIRE PROTECTION ENGINEERING
0806	MATERIALS ENGINEERING
0807	LANDSCAPE ARCHITECTURE
0808	ARCHITECTURE
0810	CIVIL ENGINEERING
0819	ENVIRONMENTAL ENGINEERING
0830	MECHANICAL ENGINEERING
0840	NUCLEAR ENGINEERING
0850	ELECTRICAL ENGINEERING
0854	COMPUTER ENGINEERING
0855	ELECTRONICS ENGINEERING
0858	BIOMEDICAL ENGINEERING
0861	AEROSPACE ENGINEERING
0871	NAVAL ARCHITECTURE
0880	MINING ENGINEERING
0881	PETROLEUM ENGINEERING
0890	AGRICULTURAL ENGINEERING
0892	CERAMIC ENGINEERING
0893	CHEMICAL ENGINEERING
0894	WELDING ENGINEERING
0896	INDUSTRIAL ENGINEER
0899	ENGINEERING AND ARCHITECTURE STUDENT TRAINEE
0904	LAW CLERK
0905	GENERAL ATTORNEY
0950	PARALEGAL SPECIALIST
0958	PENSION LAW SPECIALIST
0965	LAND LAW EXAMINING
0967	PASSPORT AND VISA EXAMINING
0987	TAX LAW SPECIALIST
0991	WORKERS'COMPENSATION CLAIMS EXAMINING
0993	SOCIAL INSURANCE CLAIMS EXAMINING
0994	UNEMPLOYMENT COMPENSATION CLAIMS EXAMINING
0996	VETERANS CLAIMS EXAMINING
0999	STUDENT TRAINEE
1001	GENERAL ARTS AND INFORMATION
1008	INTERIOR DESIGN
1010	EXHIBITS SPECIALIST
1015	MUSEUM CURATOR
1020	ILLUSTRATOR
1035	PUBLIC AFFAIRS
1040	LANGUAGE SPECIALIST
1056	ART SPECIALIST
1060	PHOTOGRAPHY

1071	AUDIOVISUAL PRODUCTION
1082	WRITING AND EDITING
1083	TECHNICAL WRITING AND EDITING
1084	VISUAL INFORMATION
1099	ARTS STUDENT TRAINEE
1101	GENERAL BUSINESS AND INDUSTRY
1102	CONTRACTING
1103	INDUSTRIAL PROPERTY MANAGEMENT
1104	PROPERTY DISPOSAL
1130	PUBLIC UTILITIES
1140	TRADE SPECIALIST
1144	COMMISSARY STORE MANAGEMENT
1145	AGRICULTURE PROGRAM SPECIALIST
1146	AGRICULTURAL MARKETING
1147	AGRICULTURAL MARKETING REPORTING
1150	INDUSTRIAL SPECIALIST
1160	FINANCIAL ANALYSIS
1161	CROP INSURANCE ADMINISTRATION
1162	CROP INSURANCE UNDERWRITING
1163	INSURANCE EXAMINING
1165	LOAN SPECIALIST
1169	INTERNAL REVENUE
1170	REALTY
1171	APPRAISING
1173	HOUSING MANAGEMENT
1176	BUILDING MANAGEMENT
1199	BUSINESS AND INDUSTRY STUDENT TRAINEE
1210	COPYRIGHT
1220	PATENT ADMINISTRATOR
1221	PATENT ADVISOR
1222	PATENT ATTORNEY
1223	PATENT CLASSIFYING
1224	PATENT EXAMINING
1226	DESIGN PATENT EXAMINING
1299	COPYRIGHT AND PATENT STUDENT TRAINEE
1301	GENERAL PHYSICAL SCIENCE
1306	HEALTH PHYSICS
1310	PHYSICS
1313	GEOPHYSICS
1315	HYDROLOGY
1320	CHEMISTRY
1321	METALURGY
1330	ASTRONOMY AND SPACE SCIENCE
1340	METEOROLOGY
1350	GEOLOGY
1360	OCEANOGRAPHY
1370	CARTOGRAPHY
1372	GEODESY
1373	LAND SURVEYING
1380	FOREST PRODUCTS TECHNOLOGY
1382	FOOD TECHNOLOGY
1384	TEXTILE TECHNOLOGY
1386	PHOTOGRAHIC TECHNOLOGY
1397	DOCUMENT ANALYSIS

1399	PHYSICAL SCIENCE STUDENT TRAINEE
1410	LIBRARIAN
1412	TECHNICAL INFORMATION SERVICES
1420	ARCHIVIST
1499	LIBRARY AND ARCHIVES STUDENT TRAINEE
1501	GENERAL MATHEMATICS (AFIT FACULTY ONLY)
1510	ACTUARY
1515	OPERATIONS RESEARCH
1520	MATHEMATICS
1529	MATHEMATICAL STATISTICIAN
1530	STATISTICIAN
1540	CRYPTOGRAPHY
1541	CRYPTANALYSIS
1550	COMPUTER SCIENCE
1599	MATHEMATICAL AND STATISTICAL STUDENT TRAINEE
1601	GENERAL FACILITIES AND EQUIPMENT
1630	CEMETARY ADMINISTRATION
1640	FACILITY MANAGEMENT
1654	PRINTING MANAGEMENT
1670	EQUIPMENT SPECIALIST
1699	EQUIPMENT AND FACILITIES MANAGEMENT STUDENT TRAINEE
1701	GENERAL EDUCATION AND TRAINING
1710	EDUCATION AND VOCATIONAL TRAINING
1712	TRAINING INSTRUCTION
1715	VOCATIONAL REHABILITATION
1720	EDUCATION PROGRAM
1725	PUBLIC HEALTH EDUCATION
1730	EDUCATION RESEARCH
1740	EDUCATION SERVICES
1750	INSTRUCTIONAL SYSTEMS
1799	EDUCATION STUDENT TRAINEE
1801	GENERAL INSPECTION, INVESTIGATION AND COMPLIANCE
1802	COMPLIANCE, INSPECTION AND SUPPORT
1810	GENERAL INVESTIGATING
1816	IMMIGRATION INSPECTION
1822	MINE SAFETY AND HEALTH
1825	AVIATION SAFETY
1831	SECURITIES COMPLIANCE
1854	ALCOHOL, TOBACCO AND FIREARMS INSPECTION
1862	CONSUMER SAFETY INSPECTION
1863	FOOD INSPECTION
1864	PUBLIC HEALTH QUARANTINE INSPECTION
1889	IMPORT SPECIALIST
1890	CUSTOMS INSPECTION
1899	INVESTIGATION STUDENT TRAINEE
1910	QUALITY ASSURANCE
1980	AGRICULTURAL COMMODITY
1999	COMMODITY GRADING QUALITY INSPECTION STUDENT TRAINEE
2001	GENERAL SUPPLY
2003	SUPPLY PROGRAM MANAGEMENT
2010	INVENTORY MANAGEMENT

2030	DISTRIBUTION FACILITIES AND STORAGE MANAGEMENT
2032	PACKAGING
2050	SUPPLY CATALOGING
2099	SUPPLY STUDENT TRAINEE
2101	TRANSPORTATION SPECIALIST
2110	TRANSPORTATION INDUSTRY ANALYSIS
2121	RAILROAD SAFETY
2123	MOTOR CARRIER SAFETY
2125	HIGHWAY SAFETY
2130	TRAFFIC MANAGEMENT
2150	TRANSPORTATION OPERATIONS
2151	DISPATCHING
2152	AIR TRAFFIC CONTROL
2161	MARINE CARGO
2181	AIR CRAFT OPERATIONS
2183	AIR NAVIGATION
2199	TRANSPORTATION STUDENT TRAINEE

TECHNICAL MANAGEMENT SUPPORT	
SERIES NUMBER	**SERIES TITLE**
0019	SAFETY TECHNICIAN
0021	COMMUNITY PLANNING TECHNICIAN
0102	SOCIAL SCIENCE AIDE
0181	PSYCHOLOGY AIDE AND TECHNICIAN
0187	SOCIAL SERVICES
0332	COMPUTER OPERATION
0390	TELECOMMUNICATIONS PROCESSING
0392	GENERAL TELECOMMUNICATIONS
0404	BIOLOGICAL SCIENCE TECHNICIAN
0421	PLANT PROTECTION TECHNICIAN
0455	RANGE TECHNICIAN
0458	SOIL CONSERVATION TECHNICIAN
0459	IRRIGATION SYSTEMS OPERATION
0462	FORESTRY TECHNICIAN
0526	TAX TECHNICIAN
0592	TAX EXAMINING
0620	PRACTICAL NURSE
0621	NURSING ASSISTANT
0622	MEDICAL SUPPLY AIDE AND TECHNICIAN
0640	HEALTH AIDE AND TECHNICIAN
0642	NUCLEAR MEDICINE TECHNICIAN
0644	MEDICAL TECHNOLOGIST
0645	MEDICAL TECHNICIAN
0646	PATHOLOGY TECHNICIAN
0647	DIAGNOSTIC RADIOLOGIC TECHNOLOGIST
0648	THERAPEUTIC RADIOLOGIC TECHNOLOGIST
0649	MEDICAL INSTRUMENT TECHNICIAN
0661	PHARMACY TECHNICIAN
0664	RESTORATION TECHNICIAN
0672	PROSTHETIC REPRESENTATIVE
0675	MEDICAL RECORDS TECHNICIAN
0683	DENTAL LABORATORY AIDE AND TECHNICIAN

0698	ENVIRONMENTAL HEALTH TECHNICIAN
0802	ENGINEERING TECHNICIAN
0809	CONSTRUCTION CONTROL
0817	SURVEYING TECHNICIAN
0818	ENGINEERING DRAFTING
0856	ELECTRONICS TECHNICIAN
0873	SHIP SURVEYING
0895	INDUSTRIAL ENGINEERING TECHNICIAN
0962	CONTACT REPRESENTATIVE
0963	LEGAL INSTRUMENTS EXAMINING
0990	GENERAL CLAIMS EXAMINING
0992	LOSS AND DAMAGE CLAIMS EXAMINING
0995	DEPENDENT AND ESTATES CLAIMS EXAMINING
1016	MUSEUM SPECIALIST AND TECHNICIAN
1152	PRODUCTION CONTROL
1202	PATENT TECHNICIAN
1211	COPYRIGHT TECHNICIAN
1311	PHYSICAL SCIENCE TECHNICIAN
1316	HYDRAULIC TECHNICIAN
1341	METEOROLOGICAL TECHNICIAN
1371	CARTOGRAPHIC TECHNICIAN
1374	GEODETIC TECHNICIAN
1411	LIBRARY TECHNICIAN
1421	ARCHIVES TECHNICIAN
1521	MATHEMATICS TECHNICIAN
1531	STATISTICAL ASSISTANT
1658	LAUNDRY AND DRY CLEANING PLANT MANAGEMENT
1667	STEWARD
1702	EDUCATION AND TRAINING TECHNICIAN
1895	CUSTOM WAREHOUSE OFFICER
2005	SUPPLY CLERICAL AND TECHNICIAN
2135	TRANSPORTATION LOSS AND DAMAGE CLAIMS
2185	AIRCREW TECHNICIAN

ADMINISTRATIVE SUPPORT	
SERIES NUMBER	**SERIES TITLE**
0029	ENVIRONMENTAL PROTECTION ASSISTANT
0085	SECURITY GUARD
0086	SECURITY CLERICAL AND ASSISTANCE
0105	SOCIAL INSURANCE ADMINISTRATOR
0107	HEALTH INSURANCE ADMINISTRATOR
0119	ECONOMICS ASSISTANT
0186	SOCIAL SERVICES AIDE AND ASSISTANCE
0189	RECREATION AIDE AND ASSISTANCE
0203	PERSONNEL CLEARANCE AND ASSISTANCE
0204	MILITARY PERSONNEL CLERICAL AND TECHNICIAN
0303	MISCELLANEOUS CLERK AND ASSISTANT
0304	INFORMATION RECEPTIONIST
0305	MAIL AND FILE
0309	CORRESPONDENCE CLERK
0312	CLERK-STENOGRAPHER AND REPORTER
0313	WORK UNIT SUPERVISOR
0318	SECRETARY
0319	CLOSED MICROPHONE REPORTER

0322	CLERK TYPIST
0326	OFFICE AUTOMATION CLERICAL AND ASSISTANCE
0335	COMPUTER CLERK AND ASSISTANCE
0342	SUPPORT SERVICES ADMINISTRATOR
0344	MANAGEMENT AND PROGRAM CLERICAL AND ASSISTANCE
0350	EQUIPMENT OPERATOR
0351	PRINTING CLERICAL
0356	DATA TRANSCRIBER
0357	CODING
0361	EQUAL OPPORTUNITY ASSISTANCE
0382	TELEPHONE OPERATING
0394	COMMUNICATIONS CLERICAL
0503	FINANICIAL CLERICAL AND ASSISTANCE
0525	ACCOUNTING TECHNICIAN
0530	CASH PROCESSING
0540	VOUCHER EXAMINING
0544	CIVILIAN PAY
0545	MILITARY PAY
0561	BUDGET CLERICAL AND ASSISTANCE
0625	AUTOPSY ASSISTANT
0650	MEDICAL TECHNICIAN
0679	MEDICAL CLERK
0681	DENTAL ASSISTANT
0986	LEGAL CLERICAL AND ASSISTANCE
0998	CLAIMS CLERICAL
1087	EDITORIAL ASSISTANCE
1105	PURCHASING
1106	PROCUREMENT CLERICAL AND ASSISTANCE
1107	PROPERTY DISPOSAL CLERICAL AND TECHNICIAN
2091	SALES STORE CLERICAL
2102	TRANSPORTATION CLERK AND ASSISTANT
2131	FREIGHT RATE
2132	TRAVEL
2134	SHIPMENT CLERICAL
2135	TRANSPORTATION LOSS AND DAMAGE CLAIMS EXAMINING
2144	CARGO SCHEDULING
2154	AIR TRAFFIC ASSISTANCE

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Qualifying positions in other job series, located in participating organizations, may be phased in during the course of the project, up to the statutory maximum. However, prior OSD and OPM approval will be required.

Current demographics and union representation for the positions covered by this demonstration project are shown in Table 3.

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Table 3—DoD Acquisition Workforce Demographics and Union Representation

CAREER PATHS	
Business Management & Technical Management Professional	9,585
Technical Management Support	1,430
Administrative Support	3,751
GS-13 AND ABOVE	5,886
GS-12 AND BELOW	8,880
OCCUPATIONAL FAMILIES	22
PERCENTAGE OF VETERANS	24.7%
UNION AFFILIATION	
AFGE	4,804
NFFE	130
NAGE	227
DoD COMPONENT	
AIR FORCE	9,859
ARMY	1,754
NAVY	2,081
MARINE CORPS	715
OSD	357
TOTAL	14,766

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Of the 14,766 personnel assigned to this project, 5,161 are represented by labor unions. Union representatives have been separately notified about the project and participated in its development. DoD is proceeding to fulfill its obligation to consult or negotiate with the unions, as appropriate, in accordance with 5 U.S.C. 4703(f).

G. Project Design

In September 1996, a Process Action Team (PAT) was formed by the Secretary of Defense in response to Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub.L. 104–106; 10 U.S.C. 1701 note). The PAT was chartered to take full opportunity of this legislation and to develop solutions for many DoD acquisition workforce personnel issues. The team included managers from each of the Military Services and DoD Components, as well as subject-matter experts from civilian personnel and manpower. This team developed 13 initiatives that together represent sweeping changes to the entire spectrum of human resources management for the DoD acquisition workforce. Several initiatives were designed to assist DoD acquisition activities in hiring and placing the best people to fulfill mission requirements. Others focused on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to manage workforce realignment effectively and maintain organizational excellence were also developed. These initiatives were endorsed and accepted in total by the acquisition leadership.

After thorough study, the original 13 initiatives were refined. Those appearing herein constitute the demonstration project for purposes of 5 U.S.C. 4703. The remainder is subject to policies established by DoD; waivers were approved at that level.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of our nation's diversity; and inhibit a quick response to economic and population changes. Line managers find

the complexity limiting as they attempt to accomplish timely recruitment of needed skills. To compete with the private sector for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined, easy to administer, and allows for timely job offers. In order to create a human resources management system that facilitates mission execution and organization excellence, this demonstration project will respond to today's dynamic environment of downsizing, restructuring, and installation closures by obtaining, developing, utilizing, incentivizing, and retaining high-performing employees. The project will provide a flexible system that can reduce, restructure, or renew the workforce quickly to meet diverse mission needs, respond to workload exigencies, and contribute to quality products, people, and workplaces.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring that allows participating organizations more rapidly to appoint individuals to positions. Appropriate recruitment methods and sources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(a) Delegated Examining Process. This demonstration project establishes a streamlined examining process. This process may be used to fill positions covered by this demonstration project, with the following exceptions: positions in the Senior Executive Service or the Executive Assignment System; Senior Level (ST/SL) positions; Administrative Law Judge positions; and positions subject to any examining process covered by court order.

An applicant's basic eligibility will be determined using OPM's Operating Manual ''Qualifications Standards for General Schedule Positions'' and DAWIA requirements as needed. Minimum eligibility requirements will be those at the lowest equivalent GS grade of the appropriate broadband level. Selective placement factors may be established in accordance with OPM's Operating Manual ''Qualifications Standards for General Schedule Positions'' when judged to be critical to successful job performance. These factors will be communicated to applicants and must be met for basic eligibility.

Candidates who meet the basic ''minimum'' qualifications will be further evaluated based on knowledge, skills, and abilities which are directly linked to the positions(s) to be filled. Based on this assessment, candidates will receive numerical scores of 70, 80, or 90. No intermediate scores will be granted except for those eligibles who are entitled to veterans' preference. Preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility), added to the minimum scores identified above. Candidates will be placed in one of the quality groups based on their numerical score, including any veterans' preference points: Basically Qualified (score of 70 to 79); Highly Qualified (score of 80 to 89); or Superior (score of 90 and above). The names of preference eligibles will be entered ahead of others having the same numerical score.

For scientific/engineering and professional positions at the basic rate of pay equivalent to GS–9 and above, candidates will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (i.e., other than scientific/engineering and professional positions at the equivalent of GS–9 and above), preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

Selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest group will be certified. If there is an insufficient number of candidates in the highest group, candidates in the next lower group may then be certified; should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, candidates will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Passing over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures.

(b) Scholastic Achievement Appointment. This demonstration project establishes a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. Candidates may be appointed under this procedure if: (1) they meet the minimum standards for the positions as published in OPM's Operating Manual ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; (2) the occupation has a positive education requirement; (3) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale; and (4) the appointment is into a position at a pay level lower than the top step of GS–7. Appointments may also be made at the equivalent of GS–9 through GS–11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation. Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. Passing over any preference eligible(s) to select a nonpreference eligible requires OPM approval under current objection procedures. This authority allows for competitive appointment to positions at the broadband level II.

2. Appointment Authority

The DoD acquisition environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to adapt the workforce rapidly to these changes. This demonstration project provides a method to expand and contract the workforce as needed. Under this demonstration project there are three appointment options: permanent, temporary limited, and modified term appointments. The permanent option is the existing career and career-conditional appointments. The temporary limited option is the existing temporary-authority-not-to-exceed-one-year appointment. The modified term option is a new appointment authority that is based on the existing term appointment, but may extend up to five years with a one-year locally approved extension. Benefits and appeal rights are the same as those currently afforded term employees.

Agencies may make a modified term appointment for a period that is expected to last longer than one year, but not to exceed five years with an option for one additional year, when the need for an employee's service is not permanent.

Reasons for making a modified term appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another position, are on extended leave, or have entered military service.

Selections for modified term appointments will be made under competitive examining processes. An agency may make a modified term appointment from the appropriate register or if the selectee is:

(a) A person with eligibility for reinstatement;

(b) Any veteran who meets the qualifications for a veterans readjustment appointment;

(c) A person eligible for career or career-conditional employment under §§ 315.601 through 315.610 inclusive, or under § 315.703;

(d) A former term employee of the agency who left prior to the expiration of his/her appointment. Reappointment must be to a position covered by the same term authority under which the individual previously served, and service under such reappointment may not exceed the expiration date of the original term appointment;

(e) A disabled veteran who has been retired from active military service with a disability rating of 30 percent or more, or has been rated by the Department of Veterans Affairs within the preceding year as having a compensable, service-connected disability of 30 percent or more;

(f) A person eligible for acquisition of competitive status for career appointment under 5 U.S.C. 3304(c). (However, a term employee does not acquire a competitive status on the basis of this term appointment, nor does this term appointment extend or terminate the employee's eligibility under 5 U.S.C. 3304(c));

(g) A temporary employee who is within reach for term appointment to the same position from an appropriate register at the time of his/her temporary appointment, or during subsequent service in the position, provided that the register was being used for term appointments at the time the employee was reached and he/she has been continuously employed in the position since being reached; or

(h) A person eligible under OPM interchange agreements.

An agency may place a modified term employee in any other modified term position provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original term appointment time period. The qualifications of modified term employees will be determined according to OPM's Operating Manual ''Qualifications Standards for General Schedule Positions'' and applicable DAWIA requirements.

Employees hired under the modified term appointment authority are in a temporary status but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term positions(s) may be eligible for conversion to career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; and (3) be selected under merit promotion procedures for the permanent position.

Service under a modified term appointment immediately prior to a permanent appointment shall count toward the probationary period requirements, provided contribution is adequate and the permanent position is in the same career path as the modified term appointment.

3. Voluntary Emeritus Program

Under the demonstration project, Commanders/Directors have the authority to offer retired or separated individuals voluntary assignments in their activities and to accept the gratuitous services of those individuals. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by civilian employees occupying regular positions required to perform the mission of the command.

The Voluntary Emeritus Program will ensure continued quality acquisition by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the acquisition community. The program will be beneficial during manpower reductions as program managers, engineers, and other skilled acquisition professionals accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Voluntary Emeritus Program, a volunteer must be recommended to the decision-making authority by one or more acquisition managers. No one who applies is entitled to an emeritus position. The decision-making authority must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a ''break in service'' or mandatory waiting period.

Voluntary Emeritus Program volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the decision-making authority, and the Civilian Personnel/Human Resources Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(i) Subchapter I of Chapter 81 of title 5, U.S.C. (using the formula established in 10 U.S.C. §§ 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) the volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) a one-page statement of duties and experience;

(g) a statement specifying that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program;

(h) a provision allowing either party to void the agreement with ten days' written notice; and

(i) the level of security access required.

4. Extended Probationary Period

For employees in the Business Management and Technical Management Professional career path, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the acquisition environment. Often new hires are required to attend extensive training and/or educational assignments away from their normal work site and outside the review of their supervisors. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires so assigned is needed. Expansion of the current one-year probationary period will afford management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of an acquisition career.

All newly hired permanent career-conditional employees in the Business Management and Technical Management Professional career path may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The extended probationary period applies to non-status hires, i.e., new hires or those who do not have reemployment or reinstatement eligibility. An employee appointed prior to the implementation date of the demonstration project will not be affected. Aside from extending the probationary period, all other features of the current probationary period are retained.

Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continued employment, the supervisor shall terminate the employee's services by written notification of the reasons for separation and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's contribution or conduct.

Service under a modified term appointment, with no break in service before a permanent appointment made under this demonstration project, shall count toward the probationary period requirements, provided that the contribution is adequate and the permanent position is in the same career path as the modified term appointment.

B. Broadbanding

1. Broadband Levels

The broadbanding system will replace the current General Schedule (GS) structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work—administrative, technical, clerical, and professional. The system will cover only those positions designated by the Defense Acquisition Workforce Improvement Act (DAWIA) in the Department of Defense Acquisition workforce and those positions that support the acquisition workforce.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Career paths are designated by NH, NJ, or NK; see chart below. Competitive promotions will be less frequent, and movement through the broadband levels will be a more seamless process than under current procedures. Like the broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

There will be four broadband levels in the demonstration project, labeled I, II, III, and IV. Levels I through IV will include the current grades of GS–01 through GS–15. These are the grades in which the DoD acquisition workforce employees are currently found. Comparison to the GS grades was used in setting the upper and lower dollar limits of the broadband levels; however, once the employees are moved into the demonstration project, GS grades will no longer apply.

The three career paths and their associated broadband levels are as follows:

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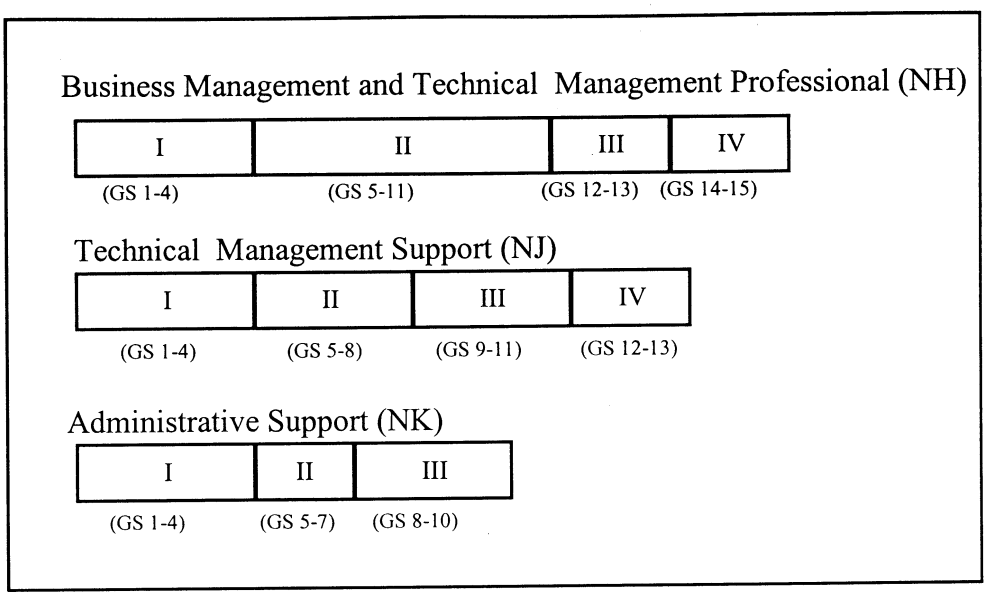

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Generally, employees will be converted into the broadband level that includes their permanent GS grade of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule are increased due to General Schedule pay increases, the minimum and maximum rates of the broadband levels will also move up. Individual employees receive pay increases based on their appraisals under the Contribution-based Compensation and Appraisal System (CCAS). Since pay progression through the levels depends on contribution, there will be no scheduled within-grade increases (WGIs) or scheduled General Schedule increases for employees once the broadbanding system is in place. Special salary rates will no longer be applicable to demonstration project employees. Employees will be eligible for the locality pay of their geographical area (see section V, paragraph A, ''Conversion to the Demonstration Project'') with the exception of those employees stationed at an overseas location.

Newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the level, as determined by rating against qualifications standards. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates.

The use of broadbanding provides a stronger link between pay and contribution to the mission of the organization. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the organization have maximum flexibility to assign individuals. Broadbanding enables the organization to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the organization and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational groups. The acquisition personnel demonstration project currently covers numerous series in the 22 occupational groups, and these occupational series will be maintained throughout the demonstration project.

2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. References in the position classification standards to grade criteria will not be used as part of the demonstration project. Rather, the CCAS broadband level descriptors, as aligned in the three career paths, will be used for the purpose of broadband level determination. These descriptors are derived from the OPM Primary Classification Standard. Under the demonstration project, each broadband level is represented by a set of descriptors. This eliminates the need for the use of grading criteria in OPM classification standards. The broadband level descriptors can be found in section D.

3. Classification Authority

Under the demonstration, commanders (or equivalent) will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the position under review, except in the case of those employees reporting directly to the commander or equivalent. First-line supervisors will provide classification recommendations. Personnel specialists will provide on-going consultation and guidance to

managers and supervisors throughout the classification process.

4. Position Requirements Document

Under the demonstration project's classification system, a new position requirements document (PRD) will replace the current agency-developed position description form. The PRD will combine the position information, staffing requirements, and contribution expectations into a single document. The new PRD will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. Supervisors may use a computer-assisted process to produce the PRD. The objectives in developing the new PRD are to: (a) simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and (c) provide a more useful tool for other functions of personnel management, e.g., recruitment, assessment of contribution, employee development, and reduction in force.

5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) Part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned, the broadband level descriptors for each broadband level, and the 5 CFR part 551 FLSA criteria.

6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his or her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the DoD appellate level. If an employee is not satisfied with the DoD response, he or she may appeal to the Office of Personnel Management only after DoD has rendered a decision under the provisions of the demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under 5 CFR 511.605 apply.

An employee may not appeal the accuracy of the position requirements document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the civilian personnel/human resources office providing personnel service and will include copies of appropriate demonstration project criteria.

D. Contribution-Based Compensation and Appraisal System

1. Overview

The purpose of the Contribution-based Compensation and Appraisal System (CCAS) is to provide an equitable and flexible method for appraising and compensating the DoD acquisition workforce. It is central to the objectives of the Defense Acquisition Workforce Improvement Act (DAWIA) and the National Performance Review, and will correlate individual compensation to organizational mission contribution. CCAS allows for more employee involvement in the performance appraisal process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to organizational contribution, and provides an understandable basis for salary changes. Most of the funds previously allocated for performance-based awards will be reserved for distribution under the CCAS system, based on employee contribution.

CCAS is a contribution-based appraisal system that goes beyond a performance-based rating system. That is, it measures the employee's contribution to the mission and goals of the organization, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing civilian performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an individual's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger than average salary increases are possible for employees who are determined to be ''inappropriately compensated—below the rails (B)'' and smaller than average increases are permitted for employees who are deemed to be ''inappropriately compensated—above the rails (A)'' in relation to their organizational contributions.

An employee's performance is a component of contribution that influences the ultimate overall contribution score (OCS). Contribution is measured by using a set of factors, discriminators, and descriptors, each of which is relevant to the success of a DoD acquisition organization. Taken together, these factors, discriminators, and descriptors capture the critical content of jobs in each career path. The factors, discriminators, and descriptors may not be modified or supplemented. These factors, discriminators, and descriptors are the same as those used to classify a position at the appropriate broadband level.

The six (6) factors are: (1) Problem Solving, (2) Teamwork/Cooperation, (3) Customer Relations, (4) Leadership/Supervision, (5) Communication, and (6) Resource Management. These factors were chosen for evaluating the yearly contribution of DoD acquisition personnel in the three career paths: (1) Business Management & Technical Management Professional, (2) Technical Management Support, and (3) Administrative Support. Each factor has multiple levels of increasing contribution corresponding to the broadband levels. Each factor contains descriptors for each respective level within the relevant career path.

CAREER PATH: (1) BUSINESS MANAGEMENT & TECHNICAL MANAGEMENT PROFESSIONAL

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem-solving results. EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed

work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Performs activities on a task; assists supervisor or other appropriate personnel. • Resolves routine problems within established guidelines. • Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply. • Takes initiative in determining and implementing appropriate procedures.	Scope/Impact Complexity/Difficulty Independence Creativity
Level II • Plans and conducts functional technical activities for projects/programs. • Identifies, analyzes, and resolves complex/difficult problems. • Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions. • Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	Scope/Impact Complexity/Difficulty Independence Creativity
Level III • Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods. • Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines. • Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment. • Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	Scope/Impact Complexity/Difficulty Independence Creativity

Level IV	
• Defines, establishes, and directs organizational focus (on challenging and highly complex project / programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	Scope/Impact
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	Complexity/Difficulty
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	Independence
• Works with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	Creativity

BILLING CODE 6325–01–C

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I	
• Works with others to accomplish routine tasks.	Scope of Team Effort
• Contributes ideas in own area of expertise. Interacts cooperatively with others.	Contribution to Team
• Regularly completes assignments in support of team goals.	Effectiveness

Level II • Works with others to accomplish projects/programs. • Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others. • Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	Scope of Team Effort Contribution to Team Effectiveness
Level III • Works with others to accomplish complex projects/programs. • Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork. • Leads and guides others in formulating and executing team plans. Expertise is sought by peers.	Scope of Team Effort Contribution to Team Effectiveness
Level IV • Leads/guides/mentors workforce in dealing with complex problems. • Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. • Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation.	Scope of Team Effort Contribution to Team Effectiveness

BILLING CODE 6325–01–C

FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS

Level I • Independently carries out routine customer requests. • Participates as a team member to meet customer needs. • Interacts with customers on routine issues with appropriate guidance.	Breadth of Influence Customer Needs Customer Interaction Level
Level II • Guides the technical/functional efforts of individuals or team members as they interact with customers. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	Breadth of Influence Customer Needs Customer Interaction Level
Level III • Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers. • Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects. • Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	Breadth of Influence Customer Needs Customer Interaction Level
Level IV • Leads and manages the organizational interactions with customers from a strategic standpoint. • Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs / projects(e.g., problems that involve determining priorities and resolving conflicts among customers' requirements). • Works at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	Breadth of Influence Customer Needs Customer Interaction Level

BILLING CODE 6325–01–C

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision to include that leaders/supervisors will recruit, develop, motivate, and retain quality team members in accordance with EEO/AA and merit principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Takes initiative in accomplishing assigned tasks. • Provides inputs to others in own technical/functional area. • Seeks and takes advantage of developmental opportunities.	Leadership Role Breadth of Influence Mentoring/Employee Development
LEVEL II • Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems. • Proactively guides, coordinates, and consults with others to accomplish projects. • Identifies and pursues individual/team development opportunities.	Leadership Role Breadth of Influence Mentoring/Employee Development
Level III • Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance. • Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues. • Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	Leadership Role Breadth of Influence Mentoring/Employee Development
LEVEL IV • Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority on specific issues. • Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success. • Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	Leadership Role Breadth of Influence Mentoring/Employee Development

BILLING CODE 6325–01–C

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications. EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task status/results as required. • Provides timely data and written analyses for input to management/technical reports or contractual documents. • Explains status/results of assigned tasks.	Level of Interaction (Audience) Written Oral
LEVEL II • Communicates team or group tasking results, internally and externally, at peer levels. • Writes, or is a major contributor to, management/technical reports or contractual documents. • Presents informational briefings.	Level of Interaction (Audience) Written Oral
LEVEL III • Communicates project or program results to all levels, internally and externally. • Reviews and approves, or is a major contributor to/ lead author of, management reports or contractual documents for external distribution. Provides inputs to policies. • Presents briefings to obtain consensus/approval.	Level of Interaction (Audience) Written Oral
LEVEL IV • Determines and communicates organizational positions on major projects or policies to senior level. • Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues. • Presents organizational briefings to convey strategic vision or organizational policies.	Level of Interaction (Audience) Written Oral

BILLING CODE 6325–01–C

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Uses assigned resources needed to accomplish tasks. • Plans individual time and assigned resources to accomplish tasks. • Effectively accomplishes assigned tasks.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL II • Plans and utilizes appropriate resources to accomplish project goals. • Optimizes resources to accomplish projects/programs within established schedules. • Effectively accomplishes projects/programs goals within established resource guidelines.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL III • Plans and allocates resources to accomplish multiple projects/programs. • Identifies and optimizes resources to accomplish multiple projects/programs goals. • Effectively accomplishes multiple projects/programs goals within established guidelines.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL IV • Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives. • Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources. • Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	Scope of Responsibility Planning/Budgeting Execution/Efficiency

BILLING CODE 6325–01–C

CAREER PATH: (2) TECHNICAL MANAGEMENT SUPPORT

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem-solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I	
• Conducts activities on a task; assists supervisors or other appropriate personnel.	Scope/Impact
• Resolves routine problems within established guidelines.	Complexity/Difficulty
• Works with others in solving problems with appropriate guidance.	Independence
• Takes initiative in selecting and implementing appropriate procedures.	reativity
LEVEL II	
• Plans and conducts technical activities for projects.	Scope/Impact
• Identifies and resolves non-routine technical problems utilizing established patterns and methods.	Complexity/Difficulty
• Identifies and resolves problems; adapts accepted policies, procedures, or methods with moderate guidance.	Independence
• Adapts existing plans and techniques to accomplish projects.	Creativity
LEVEL III	
• Plans and conducts challenging and difficult technical activities for projects/programs.	Scope/Impact
• Develops, integrates, and implements solutions to complex problems on projects/programs.	Complexity/Difficulty
• Identifies problems; develops solutions and action plans with minimal guidance.	Independence
• Develops plans and techniques to fit new situations.	Creativity

LEVEL IV • Identifies and resolves complex problems that may cross functional/technical boundaries and promulgates solutions. • Develops, integrates/implements solutions to diverse, complex problems which may cross multiple projects/programs or functional/technical areas. • Independently resolves and coordinates technical problems involving multiple projects/programs. • Develops plans and techniques to fit new situations and/or to address issues that cross technical/functional areas.	Scope/Impact Complexity/Difficulty Independence Creativity

BILLING CODE 6325–01–C

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Works with others to accomplish routine tasks. • Contributes ideas in own area of expertise. Interacts cooperatively with others. • Regularly completes assignments in support of team goals.	Scope of Team Effort Contribution to Team Effectiveness
LEVEL II • Works with others in accomplishing projects. • Contributes ideas in own area of expertise. Facilitates cooperative interactions with others. • Supports others in executing team assignments. Proactively functions as an integral part of the team.	Scope of Team Effort Contribution to Team Effectiveness
LEVEL III • Works with others to accomplish complex projects/programs. • Guides others to resolve or collaborate on complex projects/programs issues. Promotes cooperative interactions with others. • Integrates technical expertise and guides activities to support team accomplishment.	Scope of Team Effort Contribution to Team Effectiveness

LEVEL IV	
• Leads others to accomplish complex projects and programs.	Scope of Team Effort
• Applies innovative approaches to resolve unusual/difficult technical/management issues. Promotes and maintains environment for cooperation and teamwork.	Contribution to Team
• Leads and guides others in formulating and executing team plans. Expertise is sought by others.	Effectiveness

BILLING CODE 6325–01–C

FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I	
• Assists customer support activities.	Breadth of Influence
• Participates as a team member to meet customer needs.	Customer Needs
• Interacts with customers on routine issues with appropriate guidance.	Customer Interaction Level
LEVEL II	
• Actively participates with others to satisfy customer requests.	Breadth of Influence
• Interacts with customers to respond to customer needs/expectations.	Customer Needs
• Interacts with customers to communicate information and coordinate action.	Customer Interaction Level

LEVEL III • Guides the technical efforts of individuals or teams as they relate with customers. Deviates from standard approaches when necessary. • Initiates meetings and interactions with customers to understand customer needs/expectations. • Interacts independently and proactively with customers to identify/define problems and to implement solutions.	Breadth of Influence Customer Needs Customer Interaction Level
LEVEL IV • Leads and coordinates technical efforts of individuals or teams in support of customer interactions. Develops innovative approaches to satisfy customers. • Establishes customer alliances; anticipates and fulfills customer needs and translates customer needs to projects/programs. Organizes and leads customer interactions. • Interacts proactively with customers to identify and define complex/controversial problems and to develop and implement strategies or techniques for resolving projects/programs issues.	Breadth of Influence Customer Needs Customer Interaction Level

BILLING CODE 6325–01–C

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision to include that leaders/supervisors will recruit, develop, motivate, and retain quality team members in accordance with EEO/AA and merit principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I	
• Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate.	Leadership Role
• Provides input to others in technical/functional area.	Breadth of Influence
• Seeks and takes advantage of developmental opportunities.	Mentoring/Employee Development
LEVEL II	
• Actively contributes as team member; takes initiative to accomplish assigned projects.	Leadership Role
• Consults and coordinates with others to complete projects within established guidelines.	Breadth of Influence
• Identifies and pursues individual/team developmental opportunities.	Mentoring/Employee Development
LEVEL III	
• Actively contributes as team member or leader. Recognized for functional/technical expertise.	Leadership Role
• Defines, organizes, and assigns activities to accomplish goals. Guides, motivates and oversees others in accomplishing projects/programs.	Breadth of Influence
• Promotes developmental opportunities for self and team. Advises others to seek specific training.	Mentoring/Employee Development
LEVEL IV	
• Provides guidance to individuals/teams; resolves conflicts. Serves as subject matter expert.	Leadership Role
• Guides, motivates, and oversees multiple complex projects/programs.	Breadth of Influence
• Directs assignments to encourage employee development and cross-technical/functional growth to meet organizational needs. Pursues self-development.	Mentoring/Employee Development

BILLING CODE 6325–01–C

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task/status/results as required. • Provides data and accurate draft documentation of assigned tasks for input to reports or documents. • Explains status/results of assigned tasks.	Level of Interaction (Audience) Written Oral
LEVEL II • Communicates team or group project status/results at equivalent levels within the agency. • Writes segments of management/technical reports or documents. • Communicates group/team results.	Level of Interaction (Audience) Written Oral
LEVEL III • Communicates projects/programs status/results to management. • Consolidates input and writes management/technical reports/documents for projects/programs. • Presents projects/programs briefings.	Level of Interaction (Audience) Written Oral
LEVEL IV • Determines and communicates projects/programs positions at senior levels. • Prepares, reviews, and approves management/technical reports for internal and external distribution. • Presents projects/programs briefings to obtain consensus/approval. Represents the organization as technical subject matter expert.	Level of Interaction (Audience) Written Oral

BILLING CODE 6325–01–C

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS

LEVEL I • Uses assigned resources to accomplish tasks. • Plans individual time to accomplish tasks. • Effectively accomplishes assigned tasks with appropriate guidance.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL II • Identifies and uses resources appropriately to accomplish projects. • Plans resources to achieve task schedules. • Independently accomplishes assigned tasks.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL III • Plans and utilizes appropriate resources to accomplish projects/programs. • Optimizes resources to accomplish projects within established milestones. • Effectively accomplishes projects/programs within established resource guidelines.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL IV • Plans and allocates resources to accomplish multiple projects/programs goals. • Identifies and optimizes resources to accomplish multiple projects/programs goals. • Effectively accomplishes multiple projects/programs goals within established thresholds. Develops innovative approaches to attain goals and minimize resource expenditures.	Scope of Responsibility Planning/Budgeting Execution/Efficiency

BILLING CODE 6325–01–C

CAREER PATH: (3) ADMINISTRATIVE SUPPORT

FACTOR: 1.—PROBLEM SOLVING

FACTOR DESCRIPTION

This factor describes/captures personal and organizational problem solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS

LEVEL I • Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel. • Applies standard rules, procedures, or operations to resolve routine problems. • Independently carries out routine tasks. • Takes initiative in selecting and implementing appropriate procedures.	Scope/Impact Complexity/Difficulty Independence Creativity
LEVEL II • Plans and conducts administrative activities for projects. • Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty. • Independently plans and executes assignments; resolves problems and handles deviations. • Identifies and adapts guidelines for new or unusual situations.	Scope/Impact Complexity/Difficulty Independence Creativity
LEVEL III • Plans and conducts complex administrative activities. • Develops rules, procedures, or operations for complex/difficult organizational tasks. • Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts. • Identifies issues requiring new procedures and develops appropriate guidelines.	Scope/Impact Complexity/Difficulty Independence Creativity

BILLING CODE 6325–01–C

FACTOR: 2.—TEAMWORK/COOPERATION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS

LEVEL I • Works with others to accomplish routine tasks. • Contributes ideas on routine procedures. Interacts cooperatively with others. • Regularly completes tasks in support of team goals.	Scope of Team Effort Contribution to Team Effectiveness
LEVEL II • Works with others to accomplish tasks. • Resolves administrative problems; facilitates cooperative interactions with others. • Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	Scope of Team Effort Contribution to Team Effectiveness
LEVEL III • Works with others on complex issues/problems that may cross functional areas. • Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation. • Leads and guides others in formulating and executing plans in support of team goals.	Scope of Team Effort Contribution to Team Effectiveness

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FACTOR: 3.—CUSTOMER RELATIONS

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS

LEVEL I • Assists customer support activities. • Meets routine customer needs. • Interacts with customers on routine issues within specific guidelines.	Breadth of Influence Customer Needs Customer Interaction Level
LEVEL II • Guides the administrative efforts of individuals or team members as they interact with customers. • Independently interacts with customers to understand customer needs/expectations. • Interacts independently with customers to communicate information and coordinate actions.	Breadth of Influence Customer Needs Customer Interaction Level
LEVEL III • Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers. • Establishes customer alliances and translates needs to customer service. • Works independently with customers at all levels to define services and resolve non-routine problems.	Breadth of Influence Customer Needs Customer Interaction Level

BILLING CODE 6325–01–C

FACTOR: 4.—LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION

This factor describes/captures individual and organizational leadership and/or supervision to include that leaders/supervisors will recruit, develop, motivate, and retain quality team members in accordance with EEO/AA and merit principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate. • Provides input in administrative/functional area. • Seeks and takes advantage of developmental opportunities.	Leadership Role Breadth of Influence Mentoring/Employee Development
LEVEL II • Actively contributes as team member or leader; takes initiative to accomplish assigned projects. • Guides others in accomplishing projects. • Identifies and pursues individual/team developmental opportunities.	Leadership Role Breadth of Influence Mentoring/Employee Development
LEVEL III • Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others. • Guides and accounts for results or activities of individuals, teams, or projects. • Promotes individual/team development; leads development of training programs for self and others.	Leadership Role Breadth of Influence Mentoring/Employee Development

BILLING CODE 6325–01–C

FACTOR: 5.—COMMUNICATION

FACTOR DESCRIPTION

This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

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LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Communicates routine task/status results as required. • Writes timely and accurate draft documentation. • Explains status/results of assigned tasks.	Level of Interaction (Audience) Written Oral

LEVEL II • Interprets and communicates administrative procedures within immediate organization. • Prepares, coordinates, and consolidates documents, reports, or briefings. • Communicates/presents internal administrative/functional procedures and tasks internally and externally.	Level of Interaction (Audience) Written Oral
LEVEL III • Develops and advises on administrative procedures and communicates them to all levels, both internally and externally. • Prepares, reviews, and/or approves documents, reports, or briefings. • Explains and/or communicates administrative/functional procedures at all levels.	Level of Interaction (Audience) Written Oral

BILLING CODE 6325–01–C

FACTOR: 6.—RESOURCE MANAGEMENT

FACTOR DESCRIPTION

This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

BILLING CODE 6325–01–P

LEVEL DESCRIPTORS	DISCRIMINATORS
LEVEL I • Uses assigned resources to accomplish tasks. • Plans individual time and assigned resources to accomplish tasks. • Effectively accomplishes assigned tasks.	Scope of Responsibility Planning/Budgeting Execution/Efficiency
LEVEL II • Identifies and uses resources to accomplish projects. • Plans resources to achieve project schedules. • Effectively accomplishes projects within established resource guidelines.	Scope of Responsibility Planning/Budgeting Execution/Efficiency

LEVEL III • Plans, acquires, and allocates resources to accomplish objectives. • Coordinates resources across projects. • Optimizes resource utilization across projects.	 Scope of Responsibility Planning/Budgeting Execution/Efficiency

BILLING CODE 6325–01–C

2. Normal Pay Range (NPR)

The Contribution-based Compensation and Appraisal System (CCAS) integrated pay schedule provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum contribution score of 100, with a notional ''very high'' score of 115 for those employees who are capped at the top of their broadband level. The vertical axis spans from zero dollars to the dollar equivalent of GS–15, step 10. This encompasses the full salary range (excluding locality pay) paid under this demonstration; GS–1, step 1 through GS–15, step 10 for Calendar Year 1998 (CY98). (Note: Figure 1 currently depicts CY98. Each year the rails for the NPR are adjusted based on the General Schedule pay increase under 5 U.S.C. 5303.) The area between the upper and lower rail is considered the normal pay range; employees whose annual overall contribution score (OCS) plotted against their base salary falls on or within the rails are considered ''appropriately compensated.'' Employees whose salaries fall below the NPR for their assessed contribution score are considered ''inappropriately compensated—below the rail (B),'' and those falling above the NPR are considered ''inappropriately compensated—above the rails (A).'' The goal of CCAS is to make pay consistent with employees' contributions to the mission of the organization.

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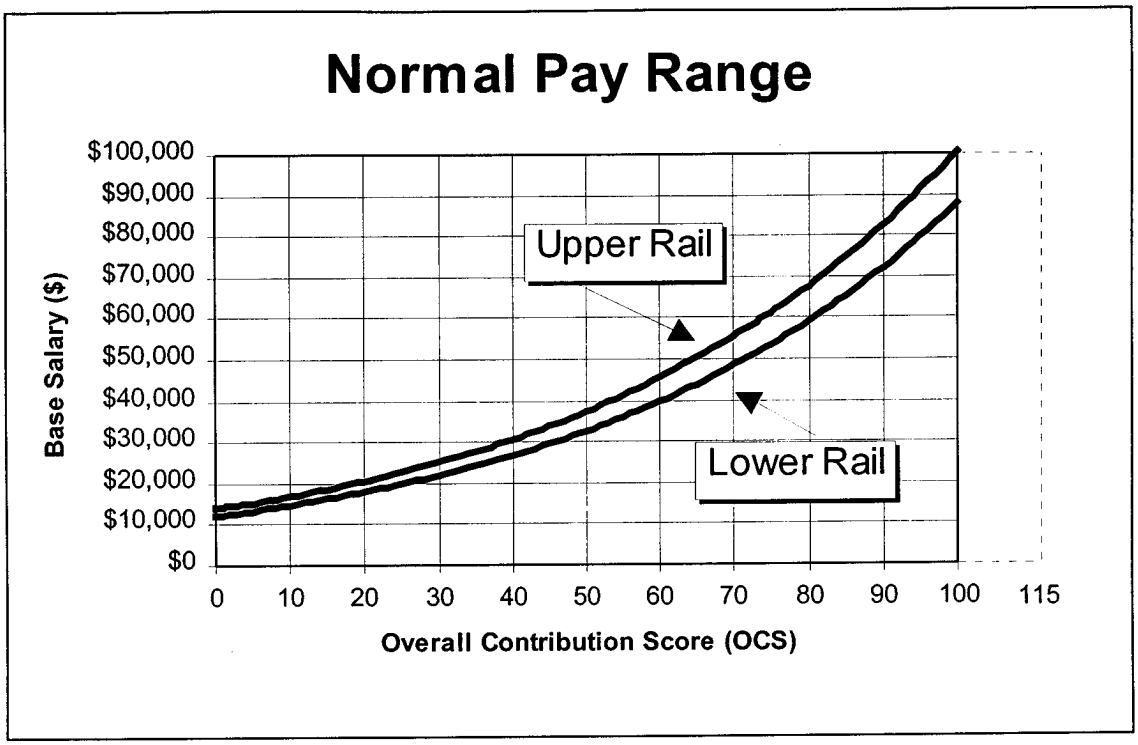
Figure 1. Normal Pay Range



BILLING CODE 6325–01–C

The NPR was established using the following parameters:

1. The lowest possible score is an OCS of 0, which equates to the lowest base salary paid under this demonstration, GS–1, step 1.

2. The OCS of 100 equates to the highest base salary paid under this demonstration, GS–15, step 10. A ''very high'' score of 115 may be awarded for employees in the Business Management and Technical Management Professional career path. When a level IV individual in this career path is performing above the high level (79–100) in a specific

factor, 115 points may be awarded. There is not a point range in the ''very high'' category; 115 points are awarded or the individual is not rated ''very high''. The same is true for the other two career paths: Technical Support with a ''very high'' score of 95, Administrative Support with a ''very high'' score of 70.

3. Changes in OCS correspond to a constant percentage change in salary along the rails.

4. The upper and lower rails encompass an area of +/-4.0 OCS points, or +/-8.0 percent in terms of salary, relative to the points established in parameters 1 and 2, above.

FORMULAE

Given these constraints, the formulae for the rails found in Figure 1 are:

Salary upper rail = (GS–1 Step 1) * (1.0800)* (1.020043) OCS
Salary lower rail = (GS–1 Step 1) * (0.9200)* (1.020043) OCS

The integrated pay schedule and the NPR are the same for all the career paths. What varies among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in Table 4. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS) salary rate for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Each year, the rails for the NPR are adjusted based on the General Schedule pay increase granted to the Federal workforce. Locality salary adjustments are not included in the NPR but are incorporated in the demonstration participants' pay.

Employees will enter the demonstration project without a loss of pay (see section V) and without a CCAS score. The first CCAS score will result from the first annual CCAS assessment process. Until then, no employee is inappropriately compensated. Employees, however, may determine their expected contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

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TABLE 4 - OCS AND SALARY RANGES BY BROADBAND LEVEL

Business Management & Technical Management Professional			
Broadband Level	**GS Grades**	**Normal OCS Range**	**Salary Range**
I	1 - 4	0 - 29	$13,362 - $23,918

II	5 - 11	22 - 66	$20,588 - $49,066
III	12 - 13	61 - 83	$45,236 - $69,930
IV	14 - 15	79 - 100 (115)	$63,567 - $97,201

Technical Management Support

Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	1 - 4	0 - 29	$13,362 - $23,918
II	5 - 8	22 - 51	$20,588 - $36,711
III	9 - 11	43 - 66	$31,195 - $49,066
IV	12 - 13	61 - 83 (95)	$45,236 - $69,930

Administrative Support

Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	1 - 4	0 - 29	$13,362 - $23,918
II	5 - 7	22 - 46	$20,588 - $33,151
III	8 - 10	38 - 61 (70)	$28,242 - $44,658

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3. CCAS Appraisal Process

The annual appraisal cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual appraisal period, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are distributed. This might be all the employees in a division or directorate. The local commander determines the pay pool structure.) At that time, employees will be advised that all factors are critical and weights will be established, if appropriate. Key terms such as ''team'' and ''customer'' will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

At the end of the annual appraisal period, the immediate supervisor (rating official) meets with his/her employees, requesting them to summarize their contributions for each factor. From employees' inputs and his/her own knowledge, the rating official identifies for each employee the appropriate contribution level (1, 2, 3, or 4) for each factor. The rating officials (including second-level supervisor) meet to ensure consistency and equity of the contribution ratings. Then the rating officials calculate the overall contribution scores (OCS).

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 5. Generally, the OCS is calculated by averaging the numerical values assigned for each of the six factors. (All OCSs will be rounded to the nearest whole number.) However, at the discretion of the pay pool manager, different weights may be applied to the factors to produce a weighted average, provided that the weights are applied uniformly across the pay pool and employees are advised in advance, i.e., at the beginning of the rating period. Weighting may not result in any factor becoming zero.

The rating officials (including second-level supervisor) meet again to review the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings, and placing the employees in rank order.

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TABLE 5. CONTRIBUTION SCORE RANGES BY CAREER PATH

Broadband Levels		Business and Technical Professional Point Range	Technical Support Point Range	Administrative Support Point Range
	Very High	115	95	70
	High	96-100	79-83	
IV	Med	84-95	67-78	
	Low	79-83	61-66	
	High	79-83	62-66	57-61
III	Med	67-78	52-61	47-56
	Low	61-66	43-51	38-46
	High	62-66	47-51	42-46
	MH	51-61	41-46	
II	Med	41-50	36-40	30-41
	ML	30-40	30-35	
	Low	22-29	22-29	22-29
	High	24-29	24-29	24-29
I	Med	6-23	6-23	6-23
	Low	0-5	0-5	0-5

BILLING CODE 6325–01–C

The pay pool panel (pay pool manager and the rating officials in the pay pool who report directly to him/her) conducts a final review of the OCS and the recommended compensation adjustments for the pay pool members. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency in the ranking of all employees. Final approval of OCS rests with the pay pool manager, the individual within the organization responsible for managing the CCAS process. The OCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and OCS to each employee and discuss the results.

If on October 1, the employee has served under CCAS for less than six months, the rating official will wait for the subsequent annual cycle to assess the employee. The first CCAS appraisal must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS appraisal process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active military duty, extended sick leave, leave without pay, etc.), the rating official will document the special circumstances on the appraisal form. The rating official will then determine which of the following options to use:

(a) re-certify the employee's last contribution appraisal; or

(b) presume the employee is contributing consistently with his/her pay level and will be given the full general increase.

Pay adjustments will be made on the basis of the CCAS appraisal or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to pay-out rules discussed in section III D 5. Final pay determinations will be made at the pay pool manager's level. CCAS scores can only be adjusted after discussion with the rating official.

Pay adjustments will be documented by SF–50, Notification of Personnel Action. For historical and analytical purposes, the effective date of CCAS assessments, actual appraisal scores, actual salary increases, amounts contributed to the pay pool, and applicable "bonus" amounts will be maintained for each demonstration project employee.

4. Pay Pools

The pay pool structure and allocated funds are under the authority of the local commander or equivalent. The following minimal guidelines will apply: (a) a pay pool is based on the organizational structure and should include a range of salaries and contribution levels; (b) a pay pool should be large enough to constitute a reasonable statistical sample, i.e., not less than 35 individuals (when possible) or more than 300 individuals; (c) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine

OCS and recommended salary adjustments; and (d) neither the pay pool manager nor the supervisors within a pay pool will recommend or set their own individual pay levels.

The amount of money available within a pay pool is determined by the general pay increase and the money that would have been available for quality step increases, within-grade increases, awards (performance-based awards as defined in 5 U.S.C. 4505(a)), promotions between grades encompassed in the same broadband level, and other appropriate factors (reference section VIII B). However, the awards money portion cannot be used for increments to salary. The dollars to be included in the pay pool will be computed based on the salaries of the employees in the pay pool as of September 30 each year.

5. Salary Adjustment Guidelines

After the initial assignment into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their overall contribution scores versus their current rate of basic pay will be plotted on a graph along with the NPR (see Figure 2).

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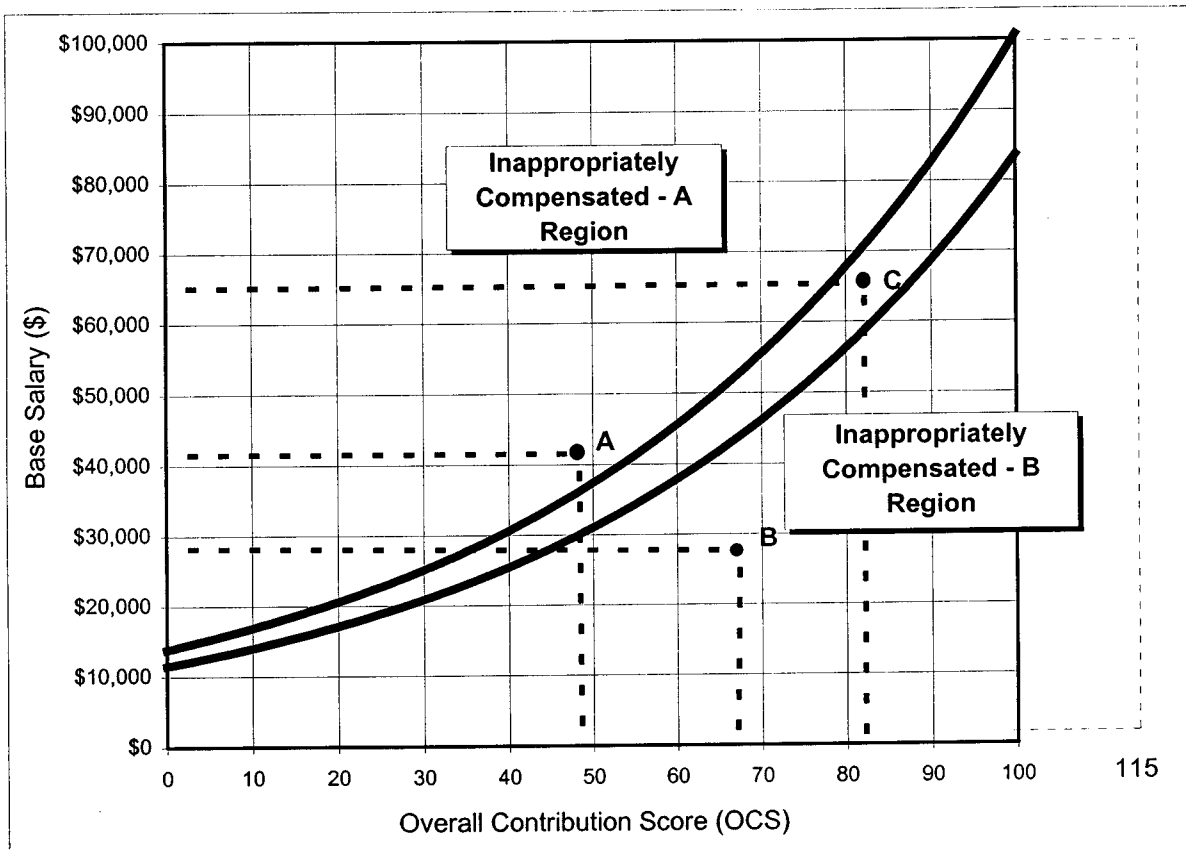

BILLING CODE 6325–01–C

Figure 2. CCAS Compensation Categories

The position of those points relative to the upper and lower rails of the NPR gives a relative measure of the compensation (salary) versus contribution (OCS). Employees fall into one of three categories: inappropriately compensated—above the rails (A), appropriately compensated (C), or inappropriately compensated—below the rails (B). Depending on the category into which each employee falls, he/she is eligible for up to three forms of additional compensation. The pay pool panel has the option of awarding the employee up to the full General Schedule pay increase (as authorized by Congress and the President), a contribution rating increase (an increase in base salary), and/or a contribution award (a lump-sum payment that does not affect base salary). Employees on retained rate in the demonstration plan will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR Part 536. An employee receiving a retained rate is not eligible for a contribution rating increase, since such increases are limited by the maximum salary rate for the employee's broadband level. An outline of compensation eligibility by contribution category is given in Table 6.

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TABLE 6.—COMPENSATION ELIGIBILITY CHART

Category	General Pay Increase	Contribution Rating Increase	Contribution Award	[1]Locality Pay
Inappropriately Compensated - A	Could be reduced or denied	NO	NO	YES
Appropriately Compensated	YES	YES[2] - Up to 6%	YES[5]	YES
Inappropriately Compensated - B	YES	YES[3,4]- Up to 20%	YES	YES

[1] Basic pay plus locality pay may not exceed Executive Level IV basic pay.
[2] May not exceed upper rail of NPR for employee's OCS or maximum salary for current broadband level.
[3] Over 20% requires local commander's approval.
[4] May not exceed 6% above the lower rail or the maximum salary for current broadband level.
[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require local commander's approval.

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In general, those employees who fall in the inappropriately compensated—B (below the rails) category of the NPR should expect to receive greater percentage salary increases than those who fall in the inappropriately compensated—A (above the rails) category. Over time, people will migrate closer to the normal pay range and receive a salary appropriate for their level of contribution.

Employees whose OCS would result in awarding a contribution rating increase such that the salary exceeds the maximum salary for their current broadband level may receive a contribution award equaling the difference.

The contribution rating increase fund includes what are now within-grade increases, quality step increases, and promotions between grades encompassed in the same broadband level. The fund will be set at not less than two percent of the activity's total salary budget (2.4 percent for the first year). This figure will be adjusted as necessary to maintain cost discipline over the life of the demonstration project. The amount of money available to each pay pool is determined annually by the local commander. The general pay increase fund and the contribution rating increase fund may be transferred to another category, but the contribution award fund may not be transferred.

The contribution award fund includes what were formerly performance awards and will be used for awards given under the CCAS process. The fund will be set at not less than one percent of the activity's total salary budget. This fund will not exceed 90 percent of the total awards budget so as to allow for other awards not related to the CCAS process, e.g., on-the-spot awards and group awards, which will continue to be encouraged by management to promote excellence in acquisition and attainment of organizational goals. For the first year this fund will be set at 1.3 percent.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to command review. The maximum available pay rate under this demonstration project will be the rate for a GS–15, step 10. Notwithstanding any other provision of this demonstration project, if General Schedule employees receive an increase under 5 U.S.C. 5303 that exceeds the amount otherwise required by that section on the date of this notice, the excess portion of such increase shall be paid to demonstration project employees in the same manner as to General Schedule employees. The excess portion of such increase shall not be distributed through the pay pool process.

6. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary following the CCAS pay-out calculation. Movement to a higher broadband level is normally a competitive action, based on Office of Personnel Management qualifications standards. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels were derived from salaries of the banded GS grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the OCS is directly related to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees between positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures. Noncompetitive promotion capabilities in the current system will remain viable in the demonstration.

Under the approved competitive selection procedures, the selecting official may consider candidates from any source based on viable and supportable job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution-based reduction-in-pay or removal procedures discussed in section III E 2.

7. Implementation Schedule

The 1998 employee annual appraisal will be done according to Component performance plan rules in effect at the time of the 1998 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level by

February 9, 1999, or as specified in the organization's implementation plan approved by DoD and OPM. It is acknowledged that implementation will be staggered and organizations will join as they successfully finalize negotiated agreements. Employees will receive base pay adjustments for accrued within-grade increases and/or career ladder promotions at the time they are reassigned into the demonstration project. All employees under the demonstration project will receive the January 1999 general pay increase.

8. CCAS Grievance Procedures

Bargaining unit employees who are covered under a collective bargaining agreement may grieve CCAS pay determinations under the grievance-arbitration provisions of the agreement. Other employees not included in a bargaining unit may utilize the appropriate administrative grievance procedures to raise a grievance against CCAS pay (5 CFR Part 771), with supplemental instructions as described below.

An employee may grieve the OCS (rating of record). If an employee is covered by a negotiated grievance procedure that includes grievances over appraisal scores, then the employee must resolve a grievance over an appraisal score under that procedure (i.e., that procedure is the sole and exclusive procedure for resolving such grievances). If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over appraisal scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental instructions described in the following paragraph.

The employee will submit the grievance first to the rating official, who will submit a recommendation to the pay pool panel. The pay pool panel may accept the rating official's recommendation or reach an independent decision. In the event that the pay pool panel's decision is different from the rating official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. That official would then render the final decision on the grievance.

9. Using the CCAS Rating as Additional Years of Retention Service Credit During Reduction in Force

Table 7 illustrates the years of retention service credit associated with appraisal results:

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TABLE 7.—RETENTION SERVICE CREDIT ASSOCIATED WITH APPRAISAL RESULTS

BUSINESS MANAGEMENT AND TECHNICAL MANAGEMENT PROFESSIONAL

Broadband	OCS	OCS Range: Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	21 or above	11 - 20	1 - 10	0
II	22 - 66	56 or above	39 - 55	22 - 38	21 or lower
III	61 - 83	76 or above	69 - 75	61 - 68	60 or lower
IV	79 - 100	95 or above	87 - 94	79 - 86	78 or lower

Technical Management Support

Broadband	OCS	OCS Range: Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	21 or above	11 - 20	1 - 10	0
II	22 - 51	42 or above	32 - 41	22 - 31	21 or lower
III	43 - 66	59 or above	51 - 58	43 - 50	42 or lower

IV	61 - 83	76 or above	69 - 75	61 - 68	60 or lower

Administrative Support

Broadband	OCS	OCS Range: Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 29	21 or above	11 - 20	1 - 10	0
II	22 - 46	39 or above	30 - 38	22 - 29	21 or lower
III	38 - 61	54 or above	46 - 53	38 - 45	37 or lower

BILLING CODE 6325–01–C

E. Special Situations Related to Pay

1. Change in Assignment

The CCAS concept, using the broadbanding structure, provides flexibility in making assignments. In many cases an employee can be assigned, without change in their rate of basic pay, within broad descriptions, and, at the same time, consistent with the needs of the organization and commensurate with the individual's qualifications. Subsequent organizational assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the need to process a personnel action. Assignment resulting in series change, broadband level change, or change to KSAs shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in organizational assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow.

(a) Competitive, Noncompetitive, and Temporary Promotions. When an employee is promoted to a higher broadband level, the salary upon promotion will be at least six percent, but not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level. When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum, the employee's salary upon promotion will be set in the higher broadband level (1) at six percent higher than the maximum rate of the employee's existing broadband level; or (2) at the employee's existing retained rate, whichever is greater.

(b) Competitive Selection for a Position with Higher Potential Salary. When an employee is competitively selected for a position with a higher target broadband level than previously held (e.g., Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF). When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the broadband level to which assigned, whichever is lower.

(d) Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action. Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action. An employee may receive a reduction in pay within his/her existing broadband level and career path; be changed to a lower broadband level; and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband due to adverse action are not entitled to pay retention.

(f) Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path). The employee is entitled to pay retention if all title 5 conditions are met.

(g) Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Broadband Level or to a Career Path with Lower Salary Potential than Held Prior to the Injury. The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

2. Contribution-Based Reduction-in-Pay or Removal Actions

CCAS is a contribution-based appraisal system that goes beyond a performance-based rating system. Contribution is measured against six critical factors corresponding to the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, critical

factors are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction in pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the appraisal period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the mid-point of the next lower broadband level (or a factor score of zero for broadband level I employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level (thereby meeting the standards for adequate contribution) and is sustained at this level, the employee may be reduced in pay or removed. For broadband level I employees, a factor score that increases to and is sustained above zero is determined to be adequate.

This written notification will include a contribution improvement plan (CIP) which outlines specific areas in which the employee is inadequately contributing. Additionally, the CIP must include standards for adequate contribution, actions required of the employee, and the time in which they must be accomplished, to increase and sustain the employee's contribution at an adequate level.

Additionally, when an employee's contribution plots in the area above the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

When the rating official informs the employee that the employee may be reduced in pay or removed, the rating official will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a CIP. The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

F. Revised Reduction-In-Force (RIF) Procedures

RIF shall be conducted according to the provisions of 5 CFR 351, except as otherwise specified below.

Displacement means the movement via RIF procedures of an employee into a position held by an employee of lower retention standing.

All positions participating in the demonstration project within a given Component and located within the same commuting area may be considered a separate competitive area. Alternatively, Components may establish all or part of the Component at a given geographic location as a competitive area. In any event, employees under this demonstration shall be placed in a different competitive area from employees who are not covered.

Employees are entitled to additional years of retention service credit in RIF, based on appraisal results. This credit will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of RIF notices. However, if at the time RIF notices are issued, three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as

appropriate. An employee who has received at least one but fewer than three previous ratings of record shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. Employees with three OCS or performance ratings shall receive credit for performance on the basis of the value of the actual ratings of record divided by three. In cases where an individual employee has no annual OCS or performance rating of record, an average OCS or performance rating will be assigned and used to determine the additional service credit for that individual. (This average rating is derived from the current ratings of record for the employees in that individual's career path and broadband level within the competitive area affected by a given RIF.) See Table 7, Retention Service Credit Associated with Appraisal Results.

When a competing employee is to be released from his/her position, the activity shall establish separate master retention lists for the competitive and excepted services, by type of work schedule and (for excepted service master retention lists) appointing authority.

Within the above groups, competing employees shall be listed on the master retention list in descending retention standing order as defined by their tenure, veterans' preference, and length of service as determined by their adjusted service computation date. Employees will be listed as follows: By tenure group I, group II, group III; within each group by veterans' preference subgroup AD (preference eligible employees with a compensable service-connected disability of 30 percent or more), subgroup A (other preference eligible employees), subgroup B (non-preference eligible employees); and, within each group, by length of service as determined by the adjusted service computation date, beginning with the earliest service date.

Employees will be ranked in order of their retention standing, beginning with the most senior employee. This employee may displace an employee of lower retention standing occupying a position that is at the same or lower broadband level and that is in a series for which the senior employee is fully qualified, to include a series in a different career path. The undue interruption standard of 5 CFR 351.403(a)(1) shall serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified, the employee must meet DAWIA statutory requirements for the position, if applicable. (However, statutory waivers shall continue to apply.) The displaced employee must be appointed under the same authority, if excepted service, and in the same work schedule. Offer of assignment shall be to the position that requires no reduction or the least possible reduction in broadband. Where more than one such position exists, the employee must be offered the position encumbered by the employee with the lowest retention standing.

Displacement rights are normally limited to one broadband level below the employee's present position. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Employees covered by the demonstration are not eligible for grade retention. Pay retention will be granted to employees downgraded by reduction in force whose rate of basic pay exceeds the maximum salary range of the broadband level to which assigned. Such employees will be entitled to retain the rate of basic pay received immediately before the reduction, not to exceed 150% of the maximum salary of the lower broadband level.

Under the demonstration project, all employees affected by a reduction-in-force action, other than a reassignment, maintain the right to appeal to the Merit Systems Protection Board (MSPB) if they believe the process/procedures were not properly applied.

Prior to RIF, employees may be offered a vacant position in the same broadband as the highest broadband available by displacement. Employees may also be offered placement into vacant positions for which management has waived the qualifications requirements. If the employee is not placed into a vacant position and cannot be made an offer of assignment via displacement, the employee shall be separated.

G. Academic Degree and Certificate Training

Trained and educated personnel are a critical resource in an acquisition organization. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the acquisition workforce, and thereby raising the overall level of performance of the acquisition workforce, and that a well-developed training program is a valuable tool for recruiting and retaining motivated employees. Currently, DAWIA authorizes degree and certificate training for acquisition-coded positions through the year 2001. This demonstration extends that authority for the duration of this demonstration and expands its coverage to the acquisition support positions identified in this demonstration project. It also provides authorization at the local level to administer and pay for these degree and certificate training programs. This authorization will facilitate continuous acquisition of advanced, specialized knowledge essential to the acquisition workforce, and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the acquisition workforce. Funding for this training, while potentially available from numerous sources (including DAWIA for employees in acquisition-coded positions), is the responsibility of the participating organization.

H. Sabbaticals

Organizations participating in the acquisition demonstration project will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the standard working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contribute to the organization's mission and to the employee's development. The program can be used for training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or industrial environment or to take advantage of the opportunity to devote full-time effort to technical or managerial research.

The acquisition demonstration project sabbatical program will be available to all demonstration project employees who have seven or more years of Federal service. Each sabbatical will be of three to twelve months' duration and must result in a product, service, report, or study that will benefit the acquisition community as well as increase the employee's individual effectiveness. Requests for a sabbatical must be made by the employee through the chain of command to the employee's installation Executive Director or equivalent, who has final approval authority and who

must ensure that the program benefits both the acquisition workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the participating organization.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training at the beginning of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) a description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and appraisal system.

In conjunction with the education, training, and career development assets of the Military Services and DoD Agencies, the demonstration project team will train, orient, and keep informed all supervisors and employees covered by the demonstration project and administrative staff responsible for implementing and administering the human resource program changes.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution evaluation software.

B. Administrative Staff

The administrative staff, general personnel specialists, technicians, and administrative officers will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

C. Employees

In the months prior to implementation, the demonstration project team and Military Service and DoD Agency training and career development offices will provide all employees covered under the demonstration project training through various media. This training is intended to fully inform all affected employees of all significant project decisions, procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. Automatic conversion from the permanent GS grade and step of record at time of conversion into the new broadband system will be accomplished. Adjustments to the employee's base salary for step increase and non-competitive career ladder promotion will be computed based on the current value of the step or promotion increase and a prorated share based upon the number of weeks an employee has completed towards the next higher step or grade, per paragraph VIII A. This conversion process, i.e. ''buy-in,'' is applicable to employees only at the initial entry of their organization into the demonstration project in accordance with their approved implementation plan.

Special salary rates will no longer be applicable to demonstration project employees. Employees on special salary rates at the time of conversion will receive a new basic rate of pay computed by dividing their highest adjusted rate of basic pay (i.e., special pay rate, or if higher, the locality rate) by the locality pay factor for their area. All employees will be eligible for the future locality pay increases of their geographic area. When conversion into the demonstration project is accompanied by a simultaneous geographic move, the employee's GS pay entitlements (including any locality or special rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. A full locality adjustment will then be added to the new basic pay rate.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate. Employees who enter the demonstration project later by lateral reassignment or transfer will enter at their current basic pay with no loss or gain due to transfer, and will not receive the ''buy-in'' applied during the initial conversion process of their organization into the demonstration project.

B. Conversion Back to the Former System

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS grade and the employee's demonstration rate of pay to a GS rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral assignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee is converted to one of the grades in their current broadband level according to the following rules:

(i) The employee's adjusted rate of pay under the demonstration project (including any locality payment) is compared with the step 4 rate in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position

is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade-interval series, only odd-numbered grades are considered below GS–11.

(ii) If the employee's adjusted demonstration project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(iii) If the employee's adjusted demonstration project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second-highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds the step 4 rate of the second-highest grade, the employee is converted to that grade.

(iv) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted demonstration project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(v) Exception: If the employee's adjusted demonstration project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(vi) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral assignment, or lateral transfer into the demonstration project, unless since that time the employee has undergone a reduction in broadband level, reduction in pay based upon an adverse action, a contribution-based action, a reduction-in-force action, or a voluntary change to lower broadband level.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay in accordance with the following rules:

(i) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(ii) An employee's adjusted rate of pay under the project (including any locality payment) is converted to a GS rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(iii) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.

(iv) If the highest applicable GS rate range is a special rate range, the employee's adjusted demonstration project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The DUSD (AR) and the DASD (CPP) will coordinate with OPM to prescribe a procedure for determining GS-equivalent pay rates for employees receiving retained rates.

4. Years of Retention Service Credit and Appraisal Rating Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (e.g., Outstanding, Level 5; Highly Successful, Level 4; Fully Successful, Level 3; or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR Part 430, the retention service credit that is based on the employee's OCS as shown in Table 7 will be translated to summary level designators as shown in Table 8 for use by the gaining agency.

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TABLE 8.—TRANSLATION OF RETENTION SERVICE CREDIT

RETENTION SERVICE CREDIT	APPRAISAL RATING LEVEL
20	Outstanding or equivalent, Level 5
16	Highly Successful or equivalent, Level 4
12	Fully Successful or equivalent, Level 3
0	Unsuccessful, Level 1

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5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

The project evaluation plan addresses how each intervention will be

comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register**, with OPM approval. At the five-year point, the entire demonstration project will be reexamined for: (a) permanent implementation; (b) modification and additional testing; (c) extension of the test period; or (d) termination.

VII. Evaluation Plan

Demonstration-authorizing legislation (5 U.S.C. Chapter 47) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. In addition, the project will be evaluated for the feasibility of application to other Federal Agencies. The overall evaluation will consist of three phases—baseline, formative, and summative evaluations. The evaluation for the participating agencies will be overseen by the Office of Merit Systems Oversight and Effectiveness, OPM; the Office of the Secretary of Defense (Acquisition & Technology); and the Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the demonstration project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures. Table 9 presents the intervention impact model to be used for this demonstration for initiatives affecting title 5.

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TABLE 9.—INTERVENTION IMPACT EVALUATION MODEL

INTERVENTIONS	EXPECTED EFFECTS	MEASURES	DATA SOURCES
1. Simplified Accelerated Hiring	A. Improved ease of hiring process	i. Perceived flexibility in authority to hire	a. Attitude survey
	B. Improved recruitment	i. Offer/accept ratios	a. Personnel office data
		ii. Percent declinations	a. Personnel office data
	C. Increased quality of new hires	i. Experience, education, skills	a. Personnel office data
	D. Reduced administrative workload/paperwork reduction	i. Actual/perceived skills	a. Personnel office data b. Attitude survey

2. Expanded Candidate Selection Process	A. Flexibility in recruitment	i. Perceived flexibility	a. Attitude survey
		ii. Number/percentage of employees hired in the 3 groups: Superior, Highly Qualified, Basically Qualified	a. Workforce data
	B. Increased quality of new hires	i. Employee effectiveness	a. Workforce data
		ii. Experience education, skills	a. Attitude survey b. Workforce data
3. Appointment Authority (Permanent, Modified Term, and Temporary Limited)	A. Increased capability to expand and contract workforce	i. Number/percentage of contingent employees	a. Workforce data
		ii. Number/percentage of conversions from modified term to permanent appointments	a. Workforce data b. Personnel office data
		iii. Average length of employment (contingent hires)	a. Workforce data b. Personnel office data
	B. Reduced administrative workload	i. Actual/perceived time savings	a. Attitude survey b. Personnel office data
4. Flexible Probationary Period	A. Expanded employee assessment period	i. Average conversion period to permanent status	a. Workforce data b. Personnel office data
		ii. Number/percentage of employees completing	a. Workforce data b. Personnel office data
		iii. Number of separations during probationary period	a. Workforce data

5. Contribution-based Compensation and Appraisal System			
I. Contribution-based pay progression	A. Increased pay-contribution link	i. Pay-contribution correlation	a. Attitude Survey b. CCAS data
		ii. Perceived pay-contribution link	a. Attitude Survey
		iii. Perceived fairness of ratings	a. Attitude Survey
		iv. Satisfaction with ratings	a. Attitude Survey
		v. Employees trust in supervisors	a. Attitude Survey
		vi. Pay progression by contribution assessment	a. Workforce data
	B. Improved contribution & performance feedback	i. Adequacy of contribution & performance feedback	a. Attitude Survey
	C. Increased retention of high contributors	i. Turnover by contribution assessment	a. Workforce data
	D. Increased turnover of low contributors	i. Turnover by contribution assessment	a. Workforce data
II. Cash Awards / bonuses	A. Reward contribution & performance	i. Amount & number of awards by career path, demographics performance	a. Workforce data b. Personnel office data
		ii. Perceived fairness of awards	a. Attitude Survey

6. Broadbanding	A. Increased organizational flexibility	i. Perceived flexibility	a. Attitude Survey
	B. Reduced administrative workload/paperwork reduction	i. Actual/perceived time savings	a. Personnel office data b. Attitude Survey
	C. Higher starting salaries	i. Starting salaries of banded vs. non-banded employees	a. Workforce data
	D. More gradual pay progression at entry level	i. Progression of new hires over time by band & career path	a. Workforce data
	E. Increased pay potential	i. Mean salaries by band, career path, demographics	a. Workforce data
	F. Higher average salary	i. Total payroll cost	a. Workforce data
	G. Increased satisfaction with advancement	i. Employees perception of advancement	a. Attitude Survey
	H. Increased pay satisfaction	i. Pay satisfaction, internal/external equity	a. Attitude Survey
7. Simplified Classification System	A. Simplified/automated classification procedures	i. Perceived flexibility ii. Fewer position requirements documents	a. Attitude Survey a. Workforce data b. Personnel office data
	B. Reduced administrative workload/paperwork reduction	i. Actual/perceived time savings	a. Personnel office data b. Attitude survey
8. Simplified Modified RIF	A. Prevent loss of high-performing employees with needed skills	i. Separate employees by demographics, performance ii. Satisfaction with RIF process	a. Workforce data b. Attitude survey/focus groups a. Personnel office data
	B. Contain cost and disruption	i. Number of employees affected by RIF ii. Time to conduct RIF iii. Number of appeals/reinstate-ments	a. Personnel office data a. Personnel office data a. Personnel office data
9. Academic Degree and Certificate Training	A. Increased employee career progression	i. Demographics of affected employees ii. Employee/manage-ment satisfaction	a. Workforce data a. Attitude survey
	B. Increased capability/flexibility for workforce shaping	i. Perceived flexibility	a. Attitude survey

10. Sabbaticals	A. Increase employee career progression	i. Demographics of affected employees	a. Workforce data
		ii. Employee/management satisfaction	a. Attitude survey
	B. Increased capability/flexibility for workforce shaping	i. Perceived flexibility	a. Attitude survey
11. Voluntary Emeritus Program	A. Encourages retirees to mentor junior professionals	i. Frequency of use	a. Workforce data

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The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to agency personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within and across DoD Components. A comparison group will be selected and compared to the demonstration project group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the demonstration project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods such as periodic attitude surveys, structured interviews, and focus groups will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their organizations in general. Evaluation activities will also take into account the unique nature of this project in terms of geographic and organizational diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (e.g., downsizing, regionalization of the personnel function, and the state of the economy in general). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes or demonstration project interventions to organizational effectiveness. In addition to assessing the impact of the individual demonstration project features, the evaluation will also assess the impact of the project as a whole, along with possible context effects and effects of intervening variables. The evaluation will also monitor impact on veterans and EEO groups, adherence to the merit systems principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the demonstration project effects and outcomes to organizational outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summative evaluation covering five (5) years. Baseline will collect workforce data to determine the ''as-is'' state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summative evaluation phase will focus on an overall assessment of the demonstration project outcomes, looking initially at the first four (4) years, with a follow-on report covering the first five (5) years. The rationale for summative evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if the participating organizations do not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summative evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

VIII. Demonstration Project Costs

A. Step and Promotion Buy-Ins

Under this demonstration project, implementation of the broadbanding pay structure eliminates the step increments of the current GS pay structure. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase for that portion of the next step corresponding to the time in-step they have completed up to the effective date of the employee conversion. As under the current system, supervisors will be able to withhold these partial increases (step) if the employee's performance has fallen below fully successful.

Rules governing within-grade increases (WGI) within each participating Military Service/DoD agency will remain in effect until the employee conversion date. Adjustments to employees' base salary for WGI equity will be computed effective the first pay period in which the employee is reassigned into the demonstration project. WGI equity shall be acknowledged by increasing base salaries by a prorated share based upon the actual number of weeks an employee has completed towards the

next higher step. Employees at step 10, or receiving retained pay at the time of conversion will not be eligible for this equity adjustment. For those employees in career-ladder promotion programs who are scheduled to be promoted to a higher grade and whose performance is at least fully successful, base pay will be increased by a prorated share of the current value of the next scheduled promotion increase based upon the actual number of weeks the employee has completed towards the next scheduled promotion. No WGI equity adjustment will be made if the employee's pay is adjusted for a promotion that would be effective before the next scheduled WGI.

For purposes of conversion into the demonstration, the January 1999 General Schedule increase to base pay will be given to all employees.

B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the DoD Acquisition Workforce. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the step and grade buy-in costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for each individual participating site by the Personnel Policy Boards for that site, and then will be reported to the DoD Acquisition Workforce Demonstration Project Executive Steering Committee. The funds determination will be based on a balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and (3) the fiscal condition of the organization. Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project by Military Services, participating Defense Agencies, DoD, and OPM, the base pay costs (including average salaries) under the demonstration project will be tracked and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

It is envisioned that each participating DoD Component shall either establish a Personnel Policy Board for the demonstration project that will consist of the senior civilian in each Program Management Office and Directorate within the Component and be chaired by the Executive Director or modify the charter of an existing group. In either case, the board is tasked with the following:

(a) Overseeing the civilian pay budget;

(b) Addressing issues associated with two separate pay systems (CCAS and GS) during the first phase of the demonstration;

(c) Determining the composition of the CCAS pay pool in accordance with the established guidelines; and statutory constraints;

(d) Reviewing operation of the Component's CCAS pay pools;

(e) Providing guidance to pay pool managers;

(f) Administering funds to CCAS pay pool managers;

(g) Reviewing hiring and promotion salaries;

(h) Monitoring award pool distribution by organization and DAWIA vs. non-DAWIA; and

(i) Assessing the need for changes to demonstration project procedures and policies.

Should any participating Component elect not to establish a Personnel Policy Board, the charter of an existing group within that Component must be modified to include the duties detailed above.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. These costs are considered shared costs and will be funded by the Deputy Undersecretary of Defense for Acquisition Reform (DUSD (AR)) for the demonstration period. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the individual participating sites. The projected annual expenses for each area are summarized in Table 10. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point.

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TABLE 10.—PROJECTED DEVELOPMENTAL COST [THEN YEAR DOLLARS ($K)]

	FY97	FY98	FY99	FY00	F701	FY02	FY03
Training	285	3465	0	0	0	0	0
Project Evaluation	310	449	308	307	534	378	378
Automation	25	70	0	0	0	0	0
Data Systems	100	350	0	0	0	0	0
Total	720	4334	308	307	534	378	378

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IX. Required Waivers to Law and Regulations

A. Waivers to title 5, United States Code

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; educational requirements prohibited; exceptions (to

the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree).

Chapter 33, Section 3317(a): Competitive service; certification from registers (insofar as ''rule of three'' is eliminated under the demonstration project).

Chapter 33, Section 3318(a): Insofar as ''rule of three'' is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107(a).

Chapter 43, Sections 4301–4305 except for 4303(e) and (f): Related to performance appraisal. In turn, 4303(e) and (f) are waived only to the extent necessary to (1) substitute ''broadband'' for ''grade'' and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 45, Sections 4502(a) and 4502(b).

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); and 5303–5305 and 5331–5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term ''grade'' with ''broadband level.''

Chapter 53, Section 5371: Related to health care positions. (This waiver applies only to the extent necessary to allow demonstration project employees to hold positions subject to Chapter 51 of title 5.) Chapter 55, Section 5545 (d): Related to hazardous duty premium pay (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Chapter 57, Sections 5753, 5754, and 5755: Related to recruitment, relocation, and retention payments, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule).

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside the continental United States or Alaska. (This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM)).

Chapter 59, Section 5948: Related to physicians comparability allowances (only to the extent necessary to treat employees under the demonstration project as General Schedule employees).

Chapter 71, to the extent its provisions (e.g., 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 71, Section 7119: To the extent it gives the Federal Service Impasses Panel jurisdiction to resolve impasses referred to it by either party or both parties during or after implementation of the demonstration project.

Chapter 75, Sections 7512 (3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace ''grade'' with ''broadband level'') and 7512 (4): Related to adverse action (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 316, Section 316.301: Term appointment (to the extent that modified term appointments may cover a maximum period of 6 years).

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: ''Rule of three'' will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligibles.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504(a) and (c): Credit for Performance; and Section 351.601: Order of Release from Competitive Level.

Part 351, Section 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Part 410, Section 410.308(a).

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (only to the extent necessary to (1) substitute ''broadband'' for ''grade'' and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Sections 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Subpart A; Subpart B; Subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 531, Subpart F: Locality Payments (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Part 536, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide

that, for the purposes of applying pay retention provisions: (1) demonstration project employees are to be treated as General Schedule employees; (2) ''grade'' is replaced by ''broadband level''; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of ''reasonable offer'' (by replacing ''two grade or pay levels'' with ''one broadband level'' and ''grade or pay level'' with ''broadband level'') and 550.902: Hazard Pay, definition of ''employee'' (only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees).

Part 575, Sections 575.102 (a)(1), 575.202 (a)(1), 575.302 (a)(1), and Subpart D: Recruitment and relocation bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas. (This waiver applies only to the extent necessary to allow demonstration project employees to be treated as employees under the General Schedule for the purposes of these provisions.)

Part 752, Sections 752.401 (a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace ''grade'' with ''broadband level'') and 752.401 (a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

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Friday
January 8, 1999

Part VIII

Environmental Protection Agency

40 CFR Part 141

Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6216–9]

Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the Unregulated Contaminant Monitoring Regulation (UCMR) for public water systems. The UCMR requires all public water systems to monitor for unregulated contaminants during one year every five years. This direct final rule concerns the suspension of monitoring by small and medium systems for monitoring scheduled to begin after December 31, 1998. EPA is suspending this monitoring since the revised UCMR program, required by the 1996 Safe Drinking Water Act Amendments, is projected to begin during this third round of monitoring. This will allow systems serving 10,000 or fewer persons to save the cost of monitoring under the existing regulation, which if performed as scheduled would overlap with monitoring under the revised UCMR program.

DATES: The regulation is effective on March 9, 1999 without further notice unless EPA receives adverse comment by February 8, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on January 22, 1999 as provided in 40 CFR 23.7.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–98–29, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). The full record for this document has been established under docket number W–98–29 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–7084 or Rachel Sakata, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–2527. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION:

Preamble Outline

Potentially Regulated Entities: The regulated entities are public water systems. All large community and nontransient non-community water systems serving more than 10,000 persons would be required to monitor. A community water system means a public water system which serves at least 15 public service connections used by year-round residents or regularly serves at least 25 year-round residents. Nontransient non-community water system means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Only a national representative sample of community and non-transient non-community systems serving 10,000 or fewer persons would be required to monitor. Transient non-community systems (i.e., systems that do not regularly serve at least 25 of the same persons over six months per year) would not be required to monitor. States, Territories, and Tribes with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and would be regulated by this action. Categories and entities that may ultimately be regulated include the following:

Category	Examples of potentially regulated entities	SIC
State, Tribal and Territorial Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and nontransient non-community water systems required to monitor.	9511
Industry	Private operators of community and nontransient non-community water systems required to monitor	4941
Municipalities	Municipal operators of community and nontransient non-community water systems required to monitor	9511

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 EPA is 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.

Proposed Rule Canceling Monitoring for Systems Serving 10,000 or Fewer Persons under Existing Regulation, 40 CFR 141.40

I. Background

The requirement to monitor unregulated contaminants was first

established by the 1986 Amendments to the Safe Drinking Water Act. The current Unregulated Contaminant Monitoring (UCM) Program implemented under 40 CFR 141.40 was established under three separate rulemakings (See **Federal Register** documents at 52 FR 25720 (July 8, 1987), 56 FR 3526 (January 30, 1991), and 57 FR 31776 (July 17, 1992)). This program includes 34 contaminants listed below in Table 1 which are to be monitored by all community and non-transient non-community water systems and 14 contaminants that are only required to be monitored at the discretion of the State. Systems serving fewer than 150 service connections were waived from monitoring provided that they sent a letter to the State by January 1, 1991, or January 1, 1994, depending upon the contaminant(s), making their facilities available to the states for monitoring. Under 40 CFR 142.15, primacy states must report the results of this monitoring to EPA. Repeat monitoring is required every 5 years.

Table 1.—List of the Current Unregulated Contaminants

Contaminants Required for Monitoring

Aldicarb
Aldicarb sulfone
Aldicarb sulfoxide
Aldrin
Bromobenzene
Bromodichloromethane
Bromoform
Bromomethane (methyl bromide)
Butachlor
Carbaryl
Chlorodibromomethane
Chloroethane
Chloroform
Chloromethane
o-Chlorotoluene
p-Chlorotoluene
Dibromomethane
Dicamba
m-Dichlorobenzene
1,1-Dichloroethane
2,2-Dichloropropane
1,3-Dichloropropane
1,1-Dichloropropene
1,3-Dichloropropene
Dieldrin
3-Hydroxycarbofuran
Methomyl
Metolachlor
Metribuzin
Propachlor
Sulfate
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
1,2,3-Trichloropropane

Contaminants for Which Monitoring Was Required at the Discretion of the State

Bromochloromethane
sec-Butylbenzene
n-Butylbenzene
tert-Butylbenzene
Dichlorodifluoromethane
Fluorotrichloromethane
Hexachlorobutadine
Isopropylbenzene
p-Isopropyltoluene
Naphthalene
n-Propylbenzene
1,2,3-Trichlorobenzene
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene

Under the requirement to monitor every five years, systems serving more than 10,000 persons were to begin their third round of monitoring for these unregulated contaminants no later than January 1, 1998. Systems serving 3,300 to 10,000 persons were to begin their third monitoring round no later than January 1, 1999, affecting 3,410 systems nationwide. Systems serving less than 3,300 are required to begin their third monitoring round no later than January 1, 2001, affecting approximately 22,000 systems nationwide.

II. Today's Action

EPA is suspending the continuing requirement for small systems to monitor every 5 years under the existing regulation. Under today's action, systems serving 3,300 to 10,000 persons will not be required to monitor after the rule is effective and systems serving less than 3,300 persons will not be required to monitor after January 1, 2001. Effective January 1, 1999, EPA is suspending monitoring that would be required to begin on or after that date. Any additional monitoring for these systems will be a part of EPA's revision of the UCM regulations, due by August 1999. This suspension does not eliminate the requirement to monitor during monitoring rounds one and two, which were required to begin in 1989 and 1994 respectively.

The reasons for this suspension of existing monitoring for systems serving 10,000 or fewer persons are:

(a) The 1996 amendments to the SDWA require EPA to overhaul the UCM program, with changes to the list of contaminants as well as the number of systems that will need to monitor. The statutory deadline for the revised UCM program is August 6, 1999.

(b) Beginning January 1, 1999, most systems serving 3,300 to 10,000 persons will need to initiate another round of monitoring for the contaminants on the existing monitoring. Under the revised program, this list of contaminants will change and many of these systems will not need to monitor for the new list of contaminants.

(c) EPA already has received results from 28,000 systems from two previous rounds of monitoring.

(d) EPA will have monitoring results from large systems (serving more than 10,000 persons) for a third monitoring round which was to begin no later than January 1, 1998. This will provide sufficient confirming information on the occurrence of contaminants and any additional action that EPA might need to take with regard to these contaminants.

Therefore, because additional monitoring under the soon-to-be-superceded program is unnecessary and burdensome for small systems, EPA believes that the monitoring requirements for these systems should be suspended.

This direct final rule grew out of the regulation development process for the Unregulated Contaminant Monitoring Regulation. The UCMR workgroup unanimously agrees that the cancellation of unregulated contaminant monitoring requirements demonstrates good government. This is because the proposed timing of the revised monitoring program occurs close to the time of monitoring required by small systems under the existing UCMR rule. The workgroup felt it was appropriate to suspend monitoring because adequate data existed to assist EPA in future regulatory decisions.

III. Cost Savings to Public Water Systems Affected by This Action

Since this action is deregulatory in nature, a cost savings will accrue to these systems. EPA estimates that the cost for the affected systems to monitor is $1,778,000 each year. Since these small systems will not incur these costs, this rule results in cost savings to them.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA believes that the Agency will have sufficient data from the previous unregulated contaminant monitoring (three monitoring rounds by systems serving more than 10,000 persons, and two monitoring rounds by systems serving 10,000 or fewer persons) to enable it to conduct the exposure assessments necessary for this sensitive subpopulation.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule does not impose any enforceable duties on these entities. Further, this rule withdraws existing requirements, resulting in an estimated cost savings to these governments and the private sector of $553,500 each year, since they would no longer incur these costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

Under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.*, information collection requirements must be submitted to the Office of Management and Budget (OMB) for approval. An Information Collection Request (ICR) document for existing requirements was previously prepared by EPA (ICR No. 270.39) and approved by OMB (OMB No. 2040–0090) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epamail.epa.gov, or by calling: (202) 260–2740. However, this rule suspends the reporting requirements previously approved as they relate to small systems. The Agency believes that by eliminating this required monitoring in the years 1999 and 2000 and beyond, reporting requirements will be commensurately reduced for state and local entities affected. EPA estimates the reduction in burden hours to be 3,774 hours, accruing in a total savings of $106,000.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by SBREFA, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Because this rule removes existing requirements and does not add any new requirements, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities and will in fact have a positive impact on them by reducing monitoring requirements in years 1999 and 2000 and beyond.

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget (OMB), an explanation for the reasons for not using such standards.

Since this action establishes no technical standards, the requirements of this Act do not apply to today's action.

G. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898—''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities.

EPA believes that the Agency will have sufficient data from the previous unregulated contaminant monitoring (three monitoring rounds by systems serving more than 10,000 persons, and two monitoring rounds by systems serving 10,000 or fewer persons) to enable it to conduct any assessments necessary for these populations.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

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

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

I. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

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

This rule does not impose any enforceable duties or any compliance costs on Indian tribal governments. Thus, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive order 13084 do not apply to this rule.

J. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for the suspension of monitoring for unregulated contaminants by systems serving 10,000 or fewer persons if adverse comments are filed. This rule will be effective on March 9, 1999 without further notice unless EPA receives adverse comment by February 8, 1999. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804 (2). This rule will be effective on March 9, 1999 unless EPA receives adverse comment and withdraws this rule before that date.

V. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities to provide early input to regulation development. Activities related to the Unregulated Contaminant Monitoring Program include specific meetings focused on revising the unregulated contaminant monitoring regulations to address the 1996 SDWA Amendments and the possibility of eliminating future monitoring under the existing unregulated contaminant monitoring regulation for systems serving 10,000 or fewer persons.

OGWDW held its first stakeholder meeting to discuss options for the development of the Unregulated Contaminant Monitoring Regulation on December 2–3, 1997, in Washington, DC. A range of stakeholders attended that meeting, including representatives of public water systems, states, industry, health and laboratory organizations, and the public. OGWDW staff prepared a background document for that meeting, *Options for Developing the Unregulated Contaminant Monitoring Regulation* (Working Draft), EPA 815–D–97–003, November 1997. A summary of that meeting is also available. Prior to preparation of the UCMR regulation, EPA also held a second stakeholders meeting on June 3–4, 1998, to obtain input from interested on significant issues evolving from drafting the regulation that needed further public input. OGWDW staff prepared a public review document for that meeting, *Background Information and Draft Annotated Outline for a Proposed Unregulated Contaminant Monitoring Regulation,* Background Document,

(Working Draft), May 1998. A meeting summary is available.

Both meetings addressed the option of suspending unregulated contaminant monitoring requirements for small public water systems. Subsequent discussions with environmental organizations identified their interest in having sufficient data to make regulatory decisions for the current list of unregulated contaminants. Based on the data EPA has from the first two monitoring rounds, EPA has made decisions whether or not to regulate these contaminants. The contaminants from this list selected for regulatory decisions are identified in the Contaminant Candidate List, published March 2, 1998 in the **Federal Register** (63 FR 10273). Additionally, the associations representing the water supply industry expressed their support for this regulation. They indicated that because the contaminants on the existing list are tested using the same methods for regulated organic chemical testing, the costs to test for additional contaminant should be minimal.

In general, the result of this public input is support for eliminating existing unregulated contaminant monitoring requirements for systems serving 10,000 or fewer persons so they will not have to monitor for the existing list of unregulated contaminants in years 1999 and 2000 or beyond.

List of Subjects in 40 CFR Part 141

Environmental protection, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 31, 1998.

Carol M. Browner,

Administrator.

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

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 141.40 is amended by adding a sentence to the end of paragraph (l) to read as follows:

§ 141.40 Special monitoring for inorganic and organic contaminants.

* * * * *

(1) * * * Systems serving 10,000 or fewer persons are not required to monitor for the contaminants in this section after December 31, 1998.

* * * * *

[FR Doc. 99–321 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6217–3]

Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action on the Unregulated Contaminant Monitoring Regulation (UCMR) for public water systems. The UCMR requires all public water systems to monitor for unregulated contaminants during one year every five years. The direct final rule concerns the suspension of monitoring by small and medium systems for monitoring scheduled to begin after December 31, 1998. EPA is issuing these revisions since the revised UCMR program, required by the 1996 Safe Drinking Water Act Amendments, is projected to begin during this third round of monitoring. This will allow systems serving 10,000 or fewer persons to save the cost of monitoring under the existing regulation, which if performed as scheduled would overlap with monitoring under the revised UCMR program.

In the ''Rules and Regulations'' section of the **Federal Register**, EPA is approving the modification to the Unregulated Contaminant Monitoring Regulation suspending monitoring by systems serving 10,000 or fewer persons as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipate no adverse comment. EPA has explained our reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, it will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA would then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing by February 8, 1999.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–98–29, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

The full record for this rulemaking has been established under docket number W–98–29 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7084 or Rachel Sakata, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–2527. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION: To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–98–29. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

This document concerns the Unregulated Contaminant Monitoring Regulation. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 141

Environmental protection, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 31, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 99–322 Filed 1–7–99; 8:45 am]

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