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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Monday, January 11, 1999

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AI29

Hazardous Duty Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide an 8 percent hazard pay differential for General Schedule employees who perform work at a land-based worksite more than 3900 meters (12,795 feet) in altitude, provided such employees are required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems. OPM is creating this new hazard pay differential authority to compensate employees who are exposed to unusual health risks.

DATES: *Effective Date:* The regulations are effective on January 11, 1999.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is responsible for establishing schedules of hazardous duty pay differentials for General Schedule employees as provided in 5 U.S.C. 5545(d). We published proposed regulations to provide an 8 percent hazard pay differential for high altitude work in the **Federal Register** on June 30, 1998 (63 FR 35543), and we received comments from two agencies and one individual. The following is a summary of those comments and one change we made in the final regulations.

One agency commented that only ''land-based'' worksites should be covered by the new hazard pay category. We agree that the phrase ''land-based worksite'' should be added to clarify that entitlement to a hazard pay differential does not apply to employees who work on an aircraft (i.e., where environmental conditions are controlled). Therefore, we have amended appendix A to subpart I of part 550 to use the term ''land-based'' worksite.

One individual commented that the altitude threshold for receiving a hazard pay differential should be lowered to 3000 meters to include employees who perform work at an altitude of 3400 meters at an atmospheric monitoring station on Mauna Loa, an extinct volcano on the Island of Hawaii. However, the employing agency does not support this recommendation because the agency has no evidence that employees at the Mauna Loa worksite are exposed to actual physical hazards. While employees at the worksite occasionally have altitude-related discomfort such as headaches, nausea, or shortness of breath, these symptoms are minor and do not reach the threshold of the possibility of hazardous health problems such as high altitude pulmonary edema, high altitude cerebral edema, or acute mountain sickness. Since hazard pay differential is authorized only for duties involving unusual physical hardship or hazard, including extreme physical discomfort or distress, we have not adopted the individual's suggestion.

One agency commented that the phrase ''commute to the worksite from a substantially lower altitude'' should be more specific and that the term ''substantially lower altitude'' should be defined. Although different agencies may interpret ''substantially lower altitude'' differently, we believe each agency is in the best position to apply this regulation based on applicable commuting requirements. A regulatory definition is not feasible. Further, we believe the proposed regulation provides sufficient guidance by indicating that the change in altitude must be sufficiently large and rapid to cause potential acclimation problems that reach the level of an unusual physical hazard.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. Some General Schedule employees of the Smithsonian Institution are currently commuting from near sea level to a work site near the 4206 meter (13,800 foot) summit of Mauna Kea on the Island of Hawaii. These employees currently meet the criteria in this final regulation for hazardous duty pay. In addition, the Smithsonian Institution has asked that this authority be made effective as soon as possible.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending subpart I of part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

1. The authority for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

2. Appendix A to subpart I of part 550 is amended by adding a new category to the Schedule of Hazard Pay Differentials to read as follows:

APPENDIX A—SCHEDULE OF PAY DIFFERENTIALS AUTHORIZED FOR HAZARDOUS DUTY UNDER SUBPART I—HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Duty	Rate of hazard pay differential (percent)	Effective date
* * * * * * *	*	*
Exposure to Physiological Hazards:		
* * * * * * *	*	*
(6) Working at high altitudes. Performing work at a land-based worksite more than 3900 meters (12,795 feet) in altitude, provided the employee is required to commute to the worksite on the same day from a substantially lower altitude under circumstances in which the rapid change in altitude may result in acclimation problems.	8	January 11, 1999.
* * * * * * *	*	*

[FR Doc. 99–522 Filed 1–8–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–348–AD; Amendment 39–10988; AD 98–25–11 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects and clarifies information in an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–11 series airplanes, that currently requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. The actions specified in that AD are intended to prevent chafing of the electrical wire assemblies, which could result in an electrical fire in the passenger compartment. This amendment corrects and clarifies the requirements of the current AD by specifying the specific area in which the subject inspection must be conducted and by correcting the part number of the ramp deflector assembly. This amendment is prompted by communication received from the manufacturer that the current requirements of the AD are unclear.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 3, 1998, the FAA issued AD 98–25–11, amendment 39–10937 (63 FR 68172, December 10, 1998), which is applicable to all McDonnell Douglas Model MD–11 series airplanes. That AD requires a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors, and repair, if necessary. That action was prompted by a report indicating that damaged electrical wires were found above the forward passenger doors due to flapper panels moving inboard and chafing the electrical wire assemblies of this area. The actions required by that AD are intended to prevent such chafing, which could result in an electrical fire in the passenger compartment.

Since the issuance of AD 98–25–11, the FAA has reviewed some of the wording of that AD and finds that clarification is necessary. The FAA's intent in paragraph (a) of the AD was that operators perform a visual inspection ''of the aircraft wiring'' to detect discrepancies of the subject area. This action revises paragraph (a) of the AD to clarify this point.

The FAA has determined that the area specified in paragraph (a)(1) of that AD is not clear in the way that it is currently worded, and that operators may misinterpret what area needs to be inspected. The FAA finds that the wording of paragraph (a)(1) must be revised to specify that a visual inspection must be accomplished ''at the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.'' In addition, this action includes a new NOTE 2 following paragraph (a)(1) of the AD to specify that the clarified area is the same area that was identified in AD 98–25–11.

In addition, the manufacturer has informed the FAA that bracket ''part number 4225419–1,'' as specified in paragraph (a)(2) of AD 98–25–11, does not exist. In addition, the FAA finds that the word ''bracket'' does not clearly describe the area in which the required inspection should be conducted. Therefore, this action revises paragraph (a)(2) of the AD to read, ''* * * in the area of the ramp deflector assembly, part number 4223570–501.''

The manufacturer also has informed the FAA that the latest revision of Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual is dated April 1, 1998. The procedures described in the revision dated April 1, 1998, are essentially identical to those described in the revision dated January 1, 1998, which was referenced in AD 98–25–11 as the appropriate source of service information for accomplishment of the repair requirement. Therefore, this action revises paragraph (b) of the AD to include Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated April 1, 1998, as an additional source of service information.

Action is taken herein to clarify and correct these requirements of AD 95–25–11 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains December 23, 1998.

Since this action only clarifies and corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

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 removing amendment 39–10937 (63 FR 68172, December 10, 1998), and by adding a new airworthiness directive (AD), amendment 39–10988, to read as follows:

98–25–11 R1 McDonnell Douglas: Amendment 39–10988. Docket 98–NM–348–AD. Revises AD 98–25–11, Amendment 39–10937.

Applicability: All Model MD–11 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 chafing of certain electrical wires above the forward passenger doors, which could result in an electrical fire in the passenger compartment, accomplish the following:

(a) Within 10 days after the effective date of this AD, perform a visual inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) At the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.

Note 2: The area specified in paragraph (a)(1) of this AD is the same area that was identified in AD 98–25–11.

(2) At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the ramp deflector assembly part number 4223570–501.

(b) If any discrepancy is detected during the visual inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998, or April 1, 1998.

(c) Within 10 days after accomplishing the visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(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, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles 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 effective date of this amendment remains December 28, 1998.

Issued in Renton, Washington, on December 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–480 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Oral Dosage Form New Animal Drugs; Albendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for anthelmintic use of the 11.36 percent albendazole suspension in sheep. Based on FDA's review of the data and information in the NADA, a tolerance for drug residues in muscle and an acceptable daily intake (ADI) are established.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 110–048 that provides for oral use of Valbazen® (albendazole) 11.36 percent suspension in sheep as an anthelmintic. Currently, the 11.36 percent drug is approved for use in cattle in NADA 110–048, and the 4.55 percent drug is approved for use in sheep in NADA 140–934. Supplemental NADA 110–048 is approved as of December 2, 1998, and the regulations are amended in § 520.45a(b)(1) (21 CFR 520.45a(b)(1)) to reflect the approval.

In addition, FDA reviewed the data concerning anthelmintic use of albendazole in Pfizer, Inc.'s NADA 110–048 for cattle and NADA 140–934 for sheep to determine a tolerance for residues of albendazole in muscle of cattle and sheep. Based on this review, a tolerance of 50 parts per billion for albendazole 2-aminosulfone in both cattle and sheep muscle is established. Additionally, the previously established ADI of 5 micrograms per kilogram of body weight per day is codified. Also, the regulations are amended in 21 CFR 556.34 to reflect the ADI and the muscle tolerance.

Furthermore, § 520.45a is amended editorially in paragraph (a)(4) by removing the ''(i)'' after the ''(4)'' and adding the ''(i)'' in place of the ''(*1*)'' following the paragraph heading, and by removing paragraph (a)(4)(i)(*2*).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) 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.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.45a is amended by redesignating the heading of paragraph (a)(4)(i) as the heading of paragraph (a)(4), by redesignating paragraph (a)(4)(i)(*1*) as paragraph (a)(4)(i), by removing paragraph (a)(4)(i)(*2*), and by revising paragraph (b)(1) to read as follows:

§ 520.45a Albendazole suspension.

(a) * * *

(4) *Conditions of use in cattle*—(i) *Amount.* * * *

(b)(1) *Specifications.* The product contains 4.55 or 11.36 percent albendazole.

* * * * *

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

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

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

4. Section 556.34 is revised to read as follows:

§ 556.34 Albendazole.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of albendazole is 5 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle.* A tolerance is established for albendazole 2-aminosulfone (marker residue) in liver (target tissue) of 0.2 part per million and in muscle of 0.05 part per million.

(2) *Sheep.* A tolerance is established for albendazole 2-aminosulfone (marker residue) in liver (target tissue) of 0.25 part per million and in muscle of 0.05 part per million.

Dated: December 17, 1998.

Andrew J. Beaulieu,

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

[FR Doc. 99–449 Filed 1–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4321–F–05]

RIN 2501–AC49

Uniform Financial Reporting Standards for HUD Housing Programs; Technical Amendment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule makes a technical amendment to HUD's regulations on Uniform Financial Reporting Standards, published on September 1, 1998. The amendment will change for certain entities whose fiscal years ends December 31st, as further described in the Supplementary Information section of this rule, the first financial report submission date from April 30, 1999 to June 30, 1999. The June 30, 1999 report submission date is only for the first year of compliance with these standards.

DATES: Effective February 10, 1999.

FOR FURTHER INFORMATION CONTACT: For further information contact Kenneth Hannon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6274, Washington, DC 20410; telephone (202) 708–0547, ext. 2599 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION: On September 1, 1998 (63 FR 46582), HUD published a final rule that established uniform annual financial reporting standards for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs. The rule provides that the financial information already required to be submitted to HUD on an annual basis under these programs must be submitted electronically to HUD and must be prepared in accordance with generally accepted accounting principles.

The September 1, 1998 final rule also established annual financial report filing dates. The rule provides for all covered entities an annual financial report submission date that is 60 days after the end of a covered entity's fiscal year. For the first year of compliance with the new standards, the September 1, 1998 rule provided an April 30, 1999 annual report submission date for those entities that are:

(1) Owners of housing assisted under Section 8 project-based housing assistance payments programs, described in § 5.801(a)(3) of the new rule; or

(2) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under certain HUD programs described in § 5.801(a)(4) of the new rule; *and*

(3) Have fiscal years ending December 31, 1998.

The majority of non-public housing entities covered by this rule fall into the category of entities that will have reports due by April 30, 1999. (Note that for public housing agencies (PHAs), the rule provides that compliance with the uniform financial reporting standards begins for PHAs with fiscal years ending September 30, 1999.)

The April 30, 1999 date with its close proximity to the Federal income tax filing deadline makes conversion to the new reporting system and completion of the required report by April 30, 1999 burdensome for entities that must meet this deadline. Therefore, this final rule amends § 5.801 to change the April 30, 1999 date to June 30, 1999. The June 30, 1999 report submission date is only for the first year of compliance with the standards. For covered entities whose fiscal years end December 31st, the report due for the year 2000 and the years that follow will be due 60 days after December 31st.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary because this final rule simply makes a technical amendment to its uniform financial reporting standards regulations to change, for certain covered entities, an April 30, 1999 annual report submission date to June 30, 1999. The April 30, 1999 date with its proximity to the new Federal income tax filing deadline makes conversion to the new reporting system and completion of the required report by April 30, 1999 burdensome for entities that must submit reports by that date. The regulatory amendment made by this rule, therefore, alleviates a burden for these entities. No policies or standards are changed by this rulemaking.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only makes a technical amendment to existing regulations by changing a reporting deadline for the first year of compliance with HUD's uniform financial reporting standards from April 30, 1999 to June 30, 1999. Although this change alleviates a burdensome requirement for covered entities and the covered entities include small entities, the rulemaking nevertheless does not result either adversely or beneficially in any significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rule only makes a technical correction to existing regulations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.855—Section 8 Rental Voucher Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.857—Section 8 Rental Certificate Program
14.859—Public Housing—Comprehensive Grant Program

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Paragraph (c) of § 5.801 is revised to read as follows;

§ 5.801 Uniform financial reporting standards.

* * * * *

(c) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law. For entities listed in paragraphs (a)(3) and (4) of this section and that have fiscal years ending December 31, 1998, the report shall be due June 30, 1999. This extended report due date is only for entities listed in paragraphs (a)(3) and (4) of this section, and only for the first report due under this section.

* * * * *

Dated: December 28, 1998.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–443 Filed 1–8–99; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8805]

RIN 1545–AQ43; 1545–AT41

Allocation of Loss With Respect to Stock and Other Personal Property; Application of Section 904 to Income Subject to Separate Limitations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary Income Tax Regulations relating to the allocation of loss recognized on the disposition of stock and other personal property and the computation of the foreign tax credit limitation. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance with respect to loss allocation. The foreign tax credit limitation regulations will affect taxpayers claiming foreign tax credits that have passive income or losses and are necessary to modify existing guidance with respect to the computation of the limitation.

DATES: *Effective dates:* These regulations are effective January 11, 1999, except that § 1.904–4(c)(2)(ii) (A) and (B) are effective March 12, 1999 and § 1.904–4(c)(3)(iv) is effective December 31, 1998.

Dates of applicability: For dates of applicability of §§ 1.865–1T, 1.865–2, and 1.865–2T, see §§ 1.865–1T(f), 1.865–2(e), and 1.865–2T(e), respectively. For dates of applicability of § 1.904–4(c), see § 1.904–4(c)(2)(i).

FOR FURTHER INFORMATION CONTACT: Seth B. Goldstein, (202) 622–3810, regarding section 865(j); and Rebecca Rosenberg, (202) 622–3850, regarding section 904(d) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (REG–209527–92, formerly INTL–1–92 (1992–1 C.B. 1209), 57 FR 20660), proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 904(d). The regulations included proposed amendments to the grouping rules under § 1.904–4(c)(3) for purposes of determining whether passive income is high taxed. The amendments were proposed to be effective for taxable years beginning after December 31, 1991. A public hearing was held on September 24, 1992, but no written or oral comments were received with respect to these provisions. These regulations are finalized as proposed. However, as described below, the effective date of the regulations has been modified.

On July 8, 1996, the IRS published proposed amendments (REG–209750–95, formerly INTL–4–95 (1996–2 C.B. 484), 61 FR 35696) to the Income Tax Regulations (26 CFR part 1) under sections 861, 865, and 904 of the Internal Revenue Code in the **Federal Register**. The regulations addressed the allocation of loss on the disposition of stock (§ 1.865–2) and other personal property (§ 1.865–1) and also contained proposed amendments to the grouping rules under § 1.904–4(c). The proposed regulations generally allocate loss with respect to stock based upon the residence of the seller (reciprocal to gain), but allocate loss on other personal property based upon the income generated by the property. A public hearing was held on November 6, 1996, and several written comments were received. The written comments endorsed the regulations' general approach with respect to the allocation of stock loss. In addition, on June 18, 1997, the Tax Court held in *International Multifoods Corporation* v. *Commissioner*, 108 T.C. 579 (1997), that loss on the disposition of stock is generally allocated based on the residence of the seller, consistent with the approach of the proposed regulations. After consideration of all the comments, the regulations proposed by INTL–4–95 with respect to stock loss and with respect to the grouping rules are adopted as amended by this Treasury decision. The principal changes to these regulations, as well as the major comments and suggestions, are discussed below. An additional anti-abuse rule, not previously proposed, is issued as a proposed and temporary regulation.

The written comments criticized the proposed regulation concerning the allocation of loss on other personal property (§ 1.865–1). This proposed regulation is withdrawn and replaced with a new proposed and temporary regulation that is more consistent with the approach of the stock loss allocation rules. The new rules are issued as a temporary regulation because of the need for immediate guidance following the *International Multifoods* opinion.

Explanation of Provisions

Section 1.861–8T(e)(8): Net Operating Loss

Section 1.861–8T(e)(8) clarifies that a net operating loss deduction allowed under section 172 is allocated and apportioned in the same manner as the deductions giving rise to the net operating loss deduction.

Section 1.865–1T: Loss With Respect to Personal Property Other Than Stock

Section 1.865–1T(a) provides the general rule that loss with respect to personal property is allocated in the same manner in which gain on the sale of the property would be sourced. Thus, for example, loss on the sale or worthlessness of a foreign bond held by a U.S. resident generally would be allocated against U.S. source income. Notice 89–58 (1989–1 C.B. 699), which addressed the allocation of loss with respect to certain bank loans, is revoked as inconsistent with this approach. Taxpayers may rely on the Notice for loss recognized prior to the effective date of the temporary regulations (see discussion of effective dates, below). Following the general rule, loss attributable to a foreign office of a U.S. resident is allocated against foreign source income where gain would be foreign source under the foreign branch rule of section 865(e)(1).

Section 1.865–1T(b) provides special rules of application. Loss on depreciable property generally is allocated based upon the allocation of depreciation deductions taken with respect to the property, consistent with the depreciation-recapture source rule of section 865(c)(1). Similarly, loss with respect to a contingent payment debt instrument subject to Reg. § 1.1275–4(b) is allocated against interest income because gain on the instrument generally is treated as interest income.

Section 1.865–1T(c) provides exceptions from the reciprocal-to-gain rule. The regulations do not apply to certain financial products (to be addressed in a future guidance project), loss governed by section 988, inventory (which is not governed by section 865), or trade receivables and certain interest equivalents (which are governed by § 1.861–9T(b)). When Prop. § 1.863–3(h) (the global dealing sourcing regulation) is finalized, § 1.865–1T will not apply to any loss sourced under that regulation. Loss attributable to accrued-but-unpaid interest income is allocated against interest income. Also, loss on a debt instrument is allocated against interest income to the extent the taxpayer did not amortize bond premium to the full extent permitted by the Code. Anti-abuse exceptions are also provided. Section 1.865–1T(c)(6)(i), which prevents taxpayers from manipulating loss allocation through related-party transfers, reorganizations, or similar transactions, and § 1.865–1T(c)(6)(ii), which addresses offsetting positions, are similar to the anti-abuse rules previously proposed with respect to stock losses. In addition, section 1.865–1T(c)(6)(iii) has been included to prevent taxpayers from accelerating foreign source income with respect to property and claiming an offsetting U.S. loss.

The temporary regulations are effective for loss recognized on or after January 11, 1999. A taxpayer may apply the regulations, however, to loss

recognized in any taxable year beginning on or after January 1, 1987, subject to certain conditions.

Section 1.865–2: Stock Loss

The proposed regulations issued in 1996 provide that generally loss with respect to stock is allocated to the residence of the seller, but contain three major exceptions: an exclusion for dispositions of portfolio stock and stock in regulated investment companies (RICs) and S corporations, a dividend recapture rule, and a consistency rule for certain dispositions of foreign affiliates. The final regulations modify these exceptions. The principal comments and changes to the regulations are discussed below.

Section 1.865–2(a): General Rule for Allocation of Stock Loss

Commentators criticized the exclusion of portfolio stock and RIC stock from the general residence-based rule, arguing that the rationale for residence-based allocation applies equally to these classes of stock. The final regulations eliminate the exception for portfolio stock and RIC stock.

In response to a comment, the final regulations clarify that § 1.865–2 does not apply to stock that constitutes inventory.

The proposed regulations allocate loss recognized on the ''sale or other disposition'' of stock. Proposed § 1.865–2(c)(2) provides that worthlessness giving rise to a deduction under section 165(g)(3) with respect to stock is treated as a disposition. Questions have been raised as to whether the regulations apply to other recognized losses that are not the result of a sale or disposition (for example, loss recognized under the mark-to-market rules of section 475). The final regulations are intended to apply to all recognized stock losses. To avoid confusion, the reference to sales or other dispositions has been deleted in the final regulations. The special reference to worthlessness deductions is therefore unnecessary and also has been deleted.

Section 1.865–2(b)(1): Dividend Recapture Exception

Some commentators questioned the dividend recapture rule of § 1.865–2(b)(1) and suggested that the rule should be limited to cases in which the dividends were fully sheltered from U.S. tax by foreign tax credits or the taxpayer did not meet a minimum holding period. Others suggested that the two-year recapture period defined in § 1.865–2(d)(5) of the proposed regulations should be shortened. Sections 1.865–2(b)(1)(i) and 1.865–2(d)(3) of the final regulations retain the two-year rule.

Section 1.865–2(b)(1)(iii) of the final regulations provides an exception from dividend recapture for passive-basket dividends. This new exception will exempt most portfolio investors (other than financial services entities) from the dividend recapture rule. The rule, which will reduce administrative burdens, reflects the fact that passive income is generally subject to residual U.S. tax and the high-tax kick-out of section 904(d)(2)(A)(iii)(III) limits the potential for cross-crediting in the passive basket, thus reducing the need for recapture. In addition, allocation of loss to the passive basket may lead to investment incentives that violate the policies underlying the passive basket. For example, where a loss allocated to the passive basket creates a separate limitation loss under section 904(f)(5) that reduces high-taxed income in other baskets, this creates an incentive in subsequent years for the taxpayer to earn low-taxed foreign passive income to utilize the foreign tax credits in the high-taxed basket (due to the recharacterization rules of section 904(f)(5)(C)).

Commentators also suggested alternatives to the de minimis rule of § 1.865–2(b)(1)(ii), which exempts from recapture dividends that are less than 10 percent of the recognized loss. The proposed de minimis rule is retained in the final regulations. The de minimis rule is intended to exempt from recapture, as a matter of administrative convenience, dividends that are relatively insignificant in comparison to the loss.

Two commentators questioned why the dividend recapture rule and the definition of the recapture period in § 1.865–2(d)(5) of the proposed regulations refer to realized, rather than recognized, loss. The wording was intended to avoid confusion over the application of the rule to loss that is deferred under section 267(f). The final regulation refers to ''recognized'' loss, but examples have been added in § 1.865–2(b)(1)(iv) of the final regulations to illustrate the application of the dividend recapture rule in the context of section 267(f) and how the result differs in the context of a consolidated group.

Proposed § 1.865–2(b)(2): Consistency Rule

Proposed § 1.865–2(b)(2) requires a taxpayer to allocate loss on the sale of a foreign affiliate to passive-basket foreign source income if the taxpayer recognized foreign source gain under section 865(f) at any time during the 5-year period preceding the loss sale. Commentators criticized this rule as producing disproportionate results where the foreign source gain is small in comparison to the subsequent loss. Furthermore, even where the gain and loss are of similar magnitude, the results may be disproportionate because sourcing the gain foreign may provide the taxpayer with minimal tax benefits (because the gain is assigned to the passive basket) but the loss may reduce (sometimes as a separate limitation loss) income that is otherwise sheltered by foreign tax credits. In addition, allocating loss to the passive basket raises the policy concerns described above with respect to passive-basket dividend recapture. After consideration of the comments, the consistency rule has been eliminated from the final regulations.

Section 1.865–2(b)(2): Anti-Abuse Rules

The anti-abuse rules of § 1.865–2(b)(3) of the proposed regulations, finalized as § 1.865–2(b)(4), have been refined and modified. One commentator requested examples illustrating the anti-abuse rules. Examples have been provided. An additional rule is provided in § 1.865–2T, discussed below.

Section 1.865–2(e): Effective Date and Retroactive Election

The proposed regulations are proposed to be effective for taxable years beginning 61 days after final regulations are promulgated. Because of the immediate need for guidance following the *International Multifoods* opinion, the final regulations are effective for losses recognized on or after January 11, 1999.

Several commentators requested that the regulations clarify the scope of the retroactive election and reduce the administrative burden of making the election. In response to these comments, § 1.865–2(e)(2) is amended to provide that a taxpayer need not make a formal election to retroactively apply the regulations to losses recognized in any post-1986 year and all subsequent pre-effective date years. An amended return will be required only if retroactive application results in a change in tax liability.

One commentator urged that the overall foreign loss transition rule in § 1.904(f)–12 be modified to provide that an overall foreign loss account attributable to a stock loss recognized in a pre-1987 year be recomputed under the new regulations in the first election year. This suggestion was rejected because the allocation of a stock loss is governed by the rules in effect in the year the loss is recognized, and the

retroactive election is available only with respect to post-1986 years. Section 1.865–2(e)(3) provides examples to illustrate the effect of the retroactive application of the regulations on overall foreign loss accounts, capital loss carryovers, and foreign tax credit carryovers.

Section 1.865–2T: Stock Loss Matching Rule

Section 1.865–2T(b)(4)(iii) provides a rule intended to prevent taxpayers from avoiding the dividend recapture rule of § 1.865–2(b)(1) or from accelerating foreign source income and recognizing an offsetting U.S. loss. This rule is substantially the same as the matching rule of § 1.865–1T(c)(6)(iii). The rule is promulgated as a temporary regulation because it is necessary to prevent abuse of the residence-based general allocation rule.

Section 1.904–4(c): Grouping Rules

The high-tax kick-out grouping rules of § 1.904–4(c) provide rules for determining when particular groups of passive income are high-taxed and, therefore, treated as general limitation income under sections 904(d)(2)(A)(iii)(III) and 904(d)(2)(F). As described above, the proposed amendments to these rules that were proposed in 1992 are finalized as proposed, but taxpayers are afforded some flexibility with respect to the effective date. The amendments were proposed to be effective for taxable years beginning after December 31, 1991. The final regulations are effective for taxable years ending on or after December 31, 1998, but taxpayers may apply the amended regulations to any taxable year beginning after December 31, 1991 and all subsequent years. An example is also added to clarify that foreign taxes that are not creditable (e.g., under section 901(k)) are not withholding taxes for purposes of the grouping rules.

The proposed amendments to the grouping rules that were proposed in 1996 are finalized with two clarifications. Proposed § 1.904–4(c)(2)(ii)(B) provides guidance where deductions allocated to a group of passive income exceed the income in that group (i.e., a loss group). A question has been raised as to the proper treatment of foreign taxes in a group that has no taxable income or loss (either because the deductions allocated to the group exactly equal the income in the group or because the foreign taxes assigned to the group are imposed on U.S. source income or income that is not currently taken into account under U.S. tax principles). Consistent with the approach taken in the proposed regulations with respect to loss groups, the final regulations clarify that foreign taxes allocated to a group with no foreign source income are ''kicked out'' and treated as related to general limitation income.

Proposed § 1.904–4(c)(2)(ii)(A) provides that foreign tax imposed on sales that result in loss for U.S. tax purposes is allocated to the group of passive income to which the loss is allocated. While this correctly states the result where loss on the disposition of property is allocated to passive income under a reciprocal-to-gain rule, under the temporary and final regulations loss may be allocated to reduce the group of passive income where income from the property was assigned (for example, dividends or interest under the anti-abuse rules or the accrued-but-unpaid interest rule) or a separate category of income other than passive income. Accordingly, § 1.904–4(c)(2)(ii)(A) of the final regulations is clarified to state that foreign tax imposed on a loss sale is allocated to the group of passive income to which a gain would have been assigned. The examples in § 1.904–4(c)(8) of the final regulations are modified to reflect the fact that the consistency rule of § 1.865–2(b)(2) of the proposed regulations has been deleted.

One commentator inquired whether the rule of § 1.904–4(c)(2)(ii)(A) allocating foreign tax on a loss sale to a group of passive income is consistent with the tax allocation rule of § 1.904–6(a)(1)(iv). The latter rule provides that a foreign tax imposed on an item of income that does not constitute income under U.S. tax principles (a base difference) shall be treated as imposed with respect to general limitation income, whereas a foreign tax imposed on an item that would be income under U.S. tax principles in another year (a timing difference) will be allocated to the appropriate separate category as if the U.S. recognized the income in the same year. Treasury and the Service believe that a base difference exists within the meaning of § 1.904–6(a)(1)(iv) only when a foreign country taxes items that the United States would never treat as taxable income, for example, gifts or life insurance proceeds. A sale that results in gain under foreign law but in loss for U.S. tax purposes is attributable to differences in basis calculations rather than to a difference in the concept of taxable income and, therefore, does not constitute a base difference. The tax allocation rule of § 1.904–4(c)(2)(ii)(A), allocating foreign taxes on a loss sale to the same group of passive income to which gain would have been assigned had the United States recognized gain on the sale, is conceptually consistent with the treatment of timing differences in § 1.904–6(a)(1)(iv).

Effect on Other Documents

The following document is obsolete as of January 11, 1999:

Notice 89–58, 1989–1 C.B. 699.

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.

This Treasury Decision finalizes notices of proposed rulemaking published May 14, 1992 (57 FR 20660) and July 8, 1996 (61 FR 35696). It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations issued pursuant to the notice of proposed rulemaking published on May 14, 1992. Furthermore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to those regulations, because the notice of proposed rulemaking was issued prior to March 29, 1996.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the portion of the notice of proposed rulemaking published on July 8, 1996, relating to section 904 of the Internal Revenue Code. 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.

A final regulatory flexibility analysis under 5 U.S.C. § 604 has been prepared for the final regulations portion of this Treasury Decision with respect to the regulations issued under section 865 of the Internal Revenue Code. A summary of the analysis is set forth below under the heading ''Summary of Regulatory Flexibility Analysis.'' Because no preceding notice of proposed rulemaking is required for the temporary regulations portion of this Treasury Decision relating to sections 861 and 865 of the Code, the provisions of the Regulatory Flexibility Act do not apply. However, an initial Regulatory Flexibility Analysis was prepared for the proposed regulations published elsewhere in this issue of the **Federal Register**.

Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

Summary of Regulatory Flexibility Analysis

It has been determined that a final regulatory flexibility analysis is required under 5 U.S.C. § 604 with respect to the final regulations portion of this Treasury Decision with respect to the regulations issued under section 865 of the Internal Revenue Code. These regulations will affect small entities such as small businesses but not other small entities, such as local government or tax exempt organizations, which do not pay taxes. The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap or conflict with these regulations. The final regulations address the allocation of loss with respect to stock. These regulations are necessary primarily for the proper computation of the foreign tax credit limitation under section 904 of the Internal Revenue Code. With respect to U.S. resident taxpayers, the regulations generally allocate losses against U.S. source income. Generally, this allocation simplifies the computation of the foreign tax credit limitation. None of the significant alternatives considered in drafting the regulations would have significantly altered the economic impact of the regulations on small entities. There are no alternative rules that are less burdensome to small entities but that accomplish the purposes of the statute.

Drafting Information

The principal author of these regulations is Seth B. Goldstein, of the Office of the Associate Chief Counsel (International), 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.

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 entries in numerical order to read as follows:

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

Section 1.865–1T also issued under 26 U.S.C. 865(j)(1).

Section 1.865–2 also issued under 26 U.S.C. 865(j)(1).

Section 1.865–2T also issued under 26 U.S.C. 865(j)(1). * * *

Par. 2. Section 1.861–8 is amended by adding paragraph (e)(7)(iii) and revising paragraph (e)(8) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(7) * * *

(iii) *Allocation of loss recognized in taxable years after 1986.* See §§ 1.865–1T, 1.865–2, and 1.865–2T for rules regarding the allocation of certain loss recognized in taxable years beginning after December 31, 1986.

(8) *Net operating loss deduction.* [Reserved.] For guidance, see § 1.861–8T(e)(8).

* * * * *

Par. 3. Section 1.861–8T is amended by adding paragraph (e)(8) and a sentence at the end of paragraph (h) to read as follows:

§ 1.861–8T Computation of taxable income from sources within the United States and from other sources and activities (Temporary).

* * * * *

(e) * * *

(8) *Net operating loss deduction.* A net operating loss deduction allowed under section 172 shall be allocated and apportioned in the same manner as the deductions giving rise to the net operating loss deduction.

* * * * *

(h) * * * Paragraph (e)(8) of this section shall cease to be effective January 8, 2002.

Par. 4. Section 1.865–1T is added immediately following § 1.864–8T, to read as follows:

§ 1.865–1T Loss with respect to personal property other than stock (Temporary).

(a) *General rules for allocation of loss*—(1) *Allocation against gain.* Except as otherwise provided in §§ 1.865–2 and 1.865–2T and paragraph (c) of this section, loss recognized with respect to personal property shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which gain from a sale of such property would give rise in the hands of the seller. Thus, for example, loss recognized by a United States resident on the sale of a bond generally is allocated to reduce United States source income.

(2) *Loss attributable to foreign office.* Except as otherwise provided in §§ 1.865–2 and 1.865–2T and paragraph (c) of this section, and except with respect to loss subject to paragraph (b) of this section, in the case of loss recognized by a United States resident with respect to property that is attributable to an office or other fixed place of business in a foreign country within the meaning of section 865(e)(3), the loss shall be allocated to reduce foreign source income if a gain on the sale of the property would have been taxable by the foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent. However, paragraph (a)(1) of this section and not this paragraph (a)(2) will apply if gain on the sale of such property would be sourced under section 865(c), (d)(1)(B), or (d)(3).

(3) *Loss recognized by United States citizen or resident alien with foreign tax home.* Except as otherwise provided in §§ 1.865–2 and 1.865–2T and paragraph (c) of this section, and except with respect to loss subject to paragraph (b) of this section, in the case of loss with respect to property recognized by a United States citizen or resident alien that has a tax home (as defined in section 911(d)(3)) in a foreign country, the loss shall be allocated to reduce foreign source income if a gain on the sale of such property would have been taxable by a foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

(4) *Allocation for purposes of section 904.* For purposes of section 904, loss recognized with respect to property that is allocated to foreign source income under this paragraph (a) shall be allocated to the separate category under section 904(d) to which gain on the sale of the property would have been assigned (without regard to section 904(d)(2)(A)(iii)(III)). For purposes of § 1.904–4(c)(2)(ii)(A), any such loss allocated to passive income shall be allocated (prior to the application of § 1.904–4(c)(2)(ii)(B)) to the group of passive income to which gain on a sale of the property would have been assigned had a sale of the property resulted in the recognition of a gain under the law of the relevant foreign jurisdiction or jurisdictions.

(5) *Loss recognized by partnership.* A partner's distributive share of loss recognized by a partnership with respect to personal property shall be allocated and apportioned in accordance with this section as if the partner had recognized the loss. If loss is attributable to an office or other fixed place of business of the partnership within the meaning of section 865(e)(3), such office or fixed place of business shall be considered to be an office of the partner for purposes of this section.

(b) *Special rules of application*—(1) *Depreciable property.* In the case of a loss recognized with respect to depreciable personal property, the gain referred to in paragraph (a)(1) of this section is the gain that would be sourced under section 865(c)(1) (depreciation recapture).

(2) *Contingent payment debt instrument.* Except to the extent provided in § 1.1275–4(b)(9)(iv), loss recognized with respect to a contingent payment debt instrument to which § 1.1275–4(b) applies (instruments issued for money or publicly traded property) shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the instrument (in the amount of the loss subject to this paragraph (b)(2)) would give rise.

(c) *Exceptions*—(1) *Foreign currency and certain financial instruments.* This section does not apply to loss governed by section 988 and loss recognized with respect to options contracts or derivative financial instruments, including futures contracts, forward contracts, notional principal contracts, or evidence of an interest in any of the foregoing.

(2) *Inventory.* This section does not apply to loss recognized with respect to property described in section 1221(1).

(3) *Interest equivalents and trade receivables.* Loss subject to § 1.861–9T(b) (loss equivalent to interest expense and loss on trade receivables) shall be allocated and apportioned under the rules of § 1.861–9T and not under the rules of this section.

(4) *Unamortized bond premium.* To the extent a taxpayer recognizing loss with respect to a bond (within the meaning of § 1.171–1(b)) did not amortize bond premium to the full extent permitted by §§ 1.171–2 or 1.171–3 (or § 1.171–1, as contained in the 26 CFR part 1 edition revised as of April 1, 1997) (as applicable), loss recognized with respect to the bond shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the bond was assigned.

(5) *Accrued interest.* Loss attributable to accrued but unpaid interest on a debt obligation shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which interest income from the obligation was assigned. For purposes of this section, whether loss is attributable to accrued but unpaid interest (rather than to principal) shall be determined under the principles of §§ 1.61–7(d) and 1.446–2(e).

(6) *Anti-abuse rules*—(i) *Transactions involving built-in losses.* If one of the principal purposes of a transaction is to change the allocation of a built-in loss with respect to personal property by transferring the property to another person, qualified business unit, office or other fixed place of business, or branch that subsequently recognizes the loss, the loss shall be allocated by the transferee as if it were recognized by the transferor immediately prior to the transaction. If one of the principal purposes of a change of residence is to change the allocation of a built-in loss with respect to personal property, the loss shall be allocated as if the change of residence had not occurred. If one of the principal purposes of a transaction is to change the allocation of a built-in loss on the disposition of personal property by converting the original property into other property and subsequently recognizing loss with respect to such other property, the loss shall be allocated as if it were recognized with respect to the original property immediately prior to the transaction. Transactions subject to this paragraph shall include, without limitation, reorganizations within the meaning of section 368(a), liquidations under section 332, transfers to a corporation under section 351, transfers to a partnership under section 721, transfers to a trust, distributions by a partnership, distributions by a trust, transfers to or from a qualified business unit, office or other fixed place of business, or branch, or exchanges under section 1031. A person may have a principal purpose of affecting loss allocation even though this purpose is outweighed by other purposes (taken together or separately).

(ii) *Offsetting positions.* If a taxpayer recognizes loss with respect to personal property and the taxpayer (or any person described in section 267(b) (after application of section 267(c), 267(e), 318 or 482 with respect to the taxpayer) holds (or held) offsetting positions with respect to such property with a principal purpose of recognizing foreign source income and United States source loss, the loss shall be allocated and apportioned against such foreign source income. For purposes of this paragraph (c)(6)(ii), positions are offsetting if the risk of loss of holding one or more positions is substantially diminished by holding one or more other positions.

(iii) *Matching rule.* To the extent a taxpayer (or a person described in section 1059(c)(3)(C) with respect to the taxpayer) recognizes foreign source income for tax purposes that results in the creation of a corresponding loss with respect to personal property, the loss shall be allocated and apportioned against such income. For examples illustrating a similar rule with respect to stock loss, see Examples 3 through 6 of § 1.865–2T(b)(4)(iv).

(d) *Definitions*—(1) *Contingent payment debt instrument.* A contingent payment debt instrument is any debt instrument that is subject to § 1.1275–4.

(2) *Depreciable personal property.* Depreciable personal property is any property described in section 865(c)(4)(A).

(3) *Terms defined in § 1.861–8.* See § 1.861–8 for the meaning of *class of gross income, statutory grouping of gross income,* and *residual grouping of gross income.*

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example 1. On January 1, 1997, *A*, a domestic corporation, purchases for $1,000 a machine that produces widgets, which *A* sells in the United States and throughout the world. Throughout *A*'s holding period, the machine is located and used in Country *X*. During *A*'s holding period, *A* incurs depreciation deductions of $400 with respect to the machine. Under § 1.861–8, *A* allocates and apportions depreciation deductions of $250 against foreign source general limitation income and $150 against U.S. source income. On December 12, 1999, *A* sells the machine and recognizes a loss of $500. Because the machine was used predominantly outside the United States, under section 865(c)(1)(B) and (c)(3)(B)(ii), gain on the disposition of the machine would be foreign source general limitation income to the extent of the depreciation adjustments. Therefore, under paragraph (b)(1) of this section, the entire $500 loss is allocated against foreign source general limitation income.

Example 2. On January 1, 1997, *A*, a domestic corporation, loans $2,000 to *N*, its wholly-owned controlled foreign corporation, in exchange for a contingent payment debt instrument subject to § 1.1275–4(b). During 1997 through 1999, *A* accrues and receives interest income of $630, $150 of which is foreign source general limitation income and $480 of which is foreign source passive income under section 904(d)(3). Assume there are no positive or negative adjustments pursuant to § 1.1275–4(b)(6) in 1997 through 1999. On January 1, 2000, *A* disposes of the debt instrument and recognizes a $770 loss. Under § 1.1275–4(b)(8)(ii), $630 of the loss is treated as ordinary loss and $140 is treated as capital loss. Assume that $140 of interest income earned in 2000 with respect to the debt

instrument would be foreign source passive income under section 904(d)(3). Under § 1.1275–4(b)(9)(iv), $150 of the ordinary loss is allocated against foreign source general limitation income and $480 of the ordinary loss is allocated against foreign source passive income. Under paragraph (b)(2) of this section, the $140 capital loss is allocated against foreign source passive income.

Example 3. On January 1, 1997, *A*, a domestic corporation, purchases for $1,000 a bond maturing January 1, 2009, with a stated principal amount of $1,000, payable at maturity. The bond provides for unconditional payments of interest of $100, payable December 31 of each year. The issuer of the bond is a foreign corporation and interest on the bond is thus foreign source. Between 1997 and 2001, *A* accrues and receives foreign source interest income of $500 with respect to the bond. On January 1, 2002, *A* sells the bond and recognizes a $500 loss. Under paragraph (a)(1) of this section, the $500 loss is allocated against U.S. source income. Paragraph (c)(6)(iii) of this section is not applicable because *A*'s recognition of the foreign source income did not result in the creation of a corresponding loss with respect to the bond.

Example 4. On January 1, 1999, *A*, a domestic corporation on the accrual method of accounting, purchases for $1,000 a bond maturing January 1, 2009, with a stated principal amount of $1,000, payable at maturity. The bond provides for unconditional payments of interest of $100, payable December 31 of each year. The issuer of the bond is a foreign corporation and interest on the bond is thus foreign source. On June 10, 1999, after *A* has accrued $44 of interest income, but before any interest has been paid, the issuer suddenly becomes insolvent and declares bankruptcy. *A* sells the bond (including the accrued interest) for $20. Assuming that *A* properly accrued $44 interest income, *A* treats the $20 proceeds from the sale of the bond as payment of interest previously accrued and recognizes a $1000 loss with respect to the bond principal and a $24 loss with respect to the accrued interest. See § 1.61–7(d). Under paragraph (a)(1) of this section, the $1000 loss with respect to the principal is allocated against U.S. source income. Under paragraph (c)(5) of this section, the $24 loss with respect to accrued but unpaid interest is allocated against foreign source interest income.

(f) *Effective date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section is effective for loss recognized on or after January 11, 1999. For purposes of this paragraph (f), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account. This section shall cease to be effective January 8, 2002.

(2) *Application to prior periods.* A taxpayer may apply the rules of this section to losses recognized in any taxable year beginning on or after January 1, 1987, and all subsequent years, provided that—

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 1999; and

(ii) The taxpayer makes appropriate adjustments to eliminate any double benefit arising from the application of this section to years that are not open for assessment.

(3) *Examples.* See § 1.865–2(e)(3) for examples illustrating an effective date provision similar to the effective date provided in this paragraph (f).

Par. 5. Section 1.865–2 is added immediately after § 1.865–1T, to read as follows:

§ 1.865–2 Loss with respect to stock.

(a) *General rules for allocation of loss with respect to stock*—(1) *Allocation against gain.* Except as otherwise provided in paragraph (b) of this section, loss recognized with respect to stock shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which gain (other than gain treated as a dividend under section 964(e)(1) or 1248) from a sale of such stock would give rise in the hands of the seller (without regard to section 865(f)). Thus, for example, loss recognized by a United States resident on the sale of stock generally is allocated to reduce United States source income.

(2) *Stock attributable to foreign office.* Except as otherwise provided in paragraph (b) of this section, in the case of loss recognized by a United States resident with respect to stock that is attributable to an office or other fixed place of business in a foreign country within the meaning of section 865(e)(3), the loss shall be allocated to reduce foreign source income if a gain on the sale of the stock would have been taxable by the foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

(3) *Loss recognized by United States citizen or resident alien with foreign tax home*—(i) *In general.* Except as otherwise provided in paragraph (b) of this section, in the case of loss with respect to stock that is recognized by a United States citizen or resident alien that has a tax home (as defined in section 911(d)(3)) in a foreign country, the loss shall be allocated to reduce foreign source income if a gain on the sale of the stock would have been taxable by a foreign country and the highest marginal rate of tax imposed on such gains in the foreign country is at least 10 percent.

(ii) *Bona fide residents of Puerto Rico.* Except as otherwise provided in paragraph (b) of this section, in the case of loss with respect to stock in a corporation described in section 865(g)(3) recognized by a United States citizen or resident alien that is a bona fide resident of Puerto Rico during the entire taxable year, the loss shall be allocated to reduce foreign source income.

(4) *Stock constituting a United States real property interest.* Loss recognized by a nonresident alien individual or a foreign corporation with respect to stock that constitutes a United States real property interest shall be allocated to reduce United States source income. For additional rules governing the treatment of such loss, see section 897 and the regulations thereunder.

(5) *Allocation for purposes of section 904.* For purposes of section 904, loss recognized with respect to stock that is allocated to foreign source income under this paragraph (a) shall be allocated to the separate category under section 904(d) to which gain on a sale of the stock would have been assigned (without regard to section 904(d)(2)(A)(iii)(III)). For purposes of § 1.904–4(c)(2)(ii)(A), any such loss allocated to passive income shall be allocated (prior to the application of § 1.904–4(c)(2)(ii)(B)) to the group of passive income to which gain on a sale of the stock would have been assigned had a sale of the stock resulted in the recognition of a gain under the law of the relevant foreign jurisdiction or jurisdictions.

(b) *Exceptions*—(1) *Dividend recapture exception*—(i) *In general.* If a taxpayer recognizes a loss with respect to shares of stock, and the taxpayer (or a person described in section 1059(c)(3)(C) with respect to such shares) included in income a dividend recapture amount (or amounts) with respect to such shares at any time during the recapture period, then, to the extent of the dividend recapture amount (or amounts), the loss shall be allocated and apportioned on a proportionate basis to the class or classes of gross income or the statutory or residual grouping or groupings of gross income to which the dividend recapture amount was assigned.

(ii) *Exception for de minimis amounts.* Paragraph (b)(1)(i) of this section shall not apply to a loss recognized by a taxpayer on the disposition of stock if the sum of all dividend recapture amounts (other than dividend recapture amounts eligible for

the exception described in paragraph (b)(1)(iii) of this section (passive limitation dividends)) included in income by the taxpayer (or a person described in section 1059(c)(3)(C)) with respect to such stock during the recapture period is less than 10 percent of the recognized loss.

(iii) *Exception for passive limitation dividends.* Paragraph (b)(1)(i) of this section shall not apply to the extent of a dividend recapture amount that is treated as income in the separate category for passive income described in section 904(d)(2)(A) (without regard to section 904(d)(2)(A)(iii)(III)). The exception provided for in this paragraph (b)(1)(iii) shall not apply to any dividend recapture amount that is treated as income in the separate category for financial services income described in section 904(d)(2)(C).

(iv) *Examples.* The application of this paragraph (b)(1) may be illustrated by the following examples:

Example 1. (i) *P*, a domestic corporation, is a United States shareholder of *N*, a controlled foreign corporation. *N* has never had any subpart F income and all of its earnings and profits are described in section 959(c)(3). On May 5, 1998, *N* distributes a dividend to *P* in the amount of $100. The dividend gives rise to a $5 foreign withholding tax, and *P* is deemed to have paid an additional $45 of foreign income tax with respect to the dividend under section 902. Under the look-through rules of section 904(d)(3) the dividend is general limitation income described in section 904(d)(1)(I).

(ii) On February 6, 2000, *P* sells its shares of *N* and recognizes a $110 loss. In 2000, *P* has the following taxable income, excluding the loss on the sale of *N*:

(A) $1,000 of foreign source income that is general limitation income described in section 904(d)(1)(I);

(B) $1,000 of foreign source capital gain from the sale of stock in a foreign affiliate that is sourced under section 865(f) and is passive income described in section 904(d)(1)(A); and

(C) $1,000 of U.S. source income.

(iii) The $100 dividend paid in 1998 is a dividend recapture amount that was included in *P*'s income within the recapture period preceding the disposition of the *N* stock. The *de minimis* exception of paragraph (b)(1)(ii) of this section does not apply because the $100 dividend recapture amount exceeds 10 percent of the $110 loss. Therefore, to the extent of the $100 dividend recapture amount, the loss must be allocated under paragraph (b)(1)(i) of this section to the separate limitation category to which the dividend was assigned (general limitation income).

(iv) *P*'s remaining $10 loss on the disposition of the *N* stock is allocated to U.S. source income under paragraph (a)(1) of this section.

(v) After allocation of the stock loss, *P*'s foreign source taxable income in 2000 consists of $900 of foreign source general limitation income and $1,000 of foreign source passive income.

Example 2. (i) *P*, a domestic corporation, owns all of the stock of *N1*, which owns all of the stock of *N2*, which owns all of the stock of *N3*. *N1*, *N2*, and *N3* are controlled foreign corporations. All of the corporations use the calendar year as their taxable year. On February 5, 1997, *N3* distributes a dividend to *N2*. The dividend is foreign personal holding company income of *N2* under section 954(c)(1)(A) that results in an inclusion of $100 in *P*'s income under section 951(a)(1)(A)(i) as of December 31, 1997. Under section 904(d)(3)(B) the inclusion is general limitation income described in section 904(d)(1)(I). The income inclusion to *P* results in a corresponding increase in *P*'s basis in the stock of *N1* under section 961(a).

(ii) On March 5, 1999, *P* sells its shares of *N1* and recognizes a $110 loss. The $100 1997 subpart F inclusion is a dividend recapture amount that was included in *P*'s income within the recapture period preceding the disposition of the *N1* stock. The de minimis exception of paragraph (b)(1)(ii) of this section does not apply because the $100 dividend recapture amount exceeds 10 percent of the $110 loss. Therefore, to the extent of the $100 dividend recapture amount, the loss must be allocated under paragraph (b)(1)(i) of this section to the separate limitation category to which the dividend recapture amount was assigned (general limitation income). The remaining $10 loss is allocated to U.S. source income under paragraph (a)(1) of this section.

Example 3. (i) *P*, a domestic corporation, owns all of the stock of *N1*, which owns all of the stock of *N2*. *N1* and *N2* are controlled foreign corporations. All the corporations use the calendar year as their taxable year and the U.S. dollar as their functional currency. On May 5, 1998, *N2* pays a dividend of $100 to *N1* out of general limitation earnings and profits.

(ii) On February 5, 2000, *N1* sells its *N2* stock to an unrelated purchaser. The sale results in a loss to *N1* of $110 for U.S. tax purposes. In 2000, *N1* has the following current earnings and profits, excluding the loss on the sale of *N2*:

(A) $1,000 of non-subpart F foreign source general limitation earnings and profits described in section 904(d)(1)(I);

(B) $1,000 of foreign source gain from the sale of stock that is taken into account in determining foreign personal holding company income under section 954(c)(1)(B)(i) and which is passive limitation earnings and profits described in section 904(d)(1)(A);

(C) $1,000 of foreign source interest income received from an unrelated person that is foreign personal holding company income under section 954(c)(1)(A) and which is passive limitation earnings and profits described in section 904(d)(1)(A).

(iii) The $100 dividend paid in 1998 is a dividend recapture amount that was included in *N1*'s income within the recapture period preceding the disposition of the *N2* stock. The *de minimis* exception of paragraph (b)(1)(ii) of this section does not apply because the $100 dividend recapture amount exceeds 10 percent of the $110 loss. Therefore, to the extent of the $100 dividend recapture amount, the loss must be allocated under paragraph (b)(1)(i) of this section to the separate limitation category to which the dividend was assigned (general limitation earnings and profits).

(iv) *N1*'s remaining $10 loss on the disposition of the *N2* stock is allocated to foreign source passive limitation earnings and profits under paragraph (a)(1) of this section.

(v) After allocation of the stock loss, *N1*'s current earnings and profits for 1998 consist of $900 of foreign source general limitation earnings and profits and $1,990 of foreign source passive limitation earnings and profits.

(vi) After allocation of the stock loss, *N1*'s subpart F income for 2000 consists of $1,000 of foreign source interest income that is foreign personal holding company income under section 954(c)(1)(A) and $890 of foreign source net gain that is foreign personal holding company income under section 954(c)(1)(B)(i). *P* includes $1,890 in income under section 951(a)(1)(A)(i) as passive income under sections 904(d)(1)(A) and 904(d)(3)(B).

Example 4. P, a foreign corporation, has two wholly-owned subsidiaries, *S*, a domestic corporation, and *B*, a foreign corporation. On January 1, 2000, *S* purchases a one-percent interest in *N*, a foreign corporation, for $100. On January 2, 2000, *N* distributes a $20 dividend to *S*. The $20 dividend is foreign source financial services income. On January 3, 2000, *S* sells its *N* stock to *B* for $80 and recognizes a $20 loss that is deferred under section 267(f). On June 10, 2008, *B* sells its *N* stock to an unrelated person for $55. Under section 267(f) and § 1.267(f)–1(c)(1), *S*'s $20 loss is deferred until 2008. Under this paragraph (b)(1), the $20 loss is allocated to reduce foreign source financial services income in 2008 because the loss was recognized (albeit deferred) within the 24-month recapture period following the receipt of the dividend. See §§ 1.267(f)–1(a)(2)(i)(B) and 1.267(f)–1(c)(2).

Example 5. The facts are the same as in *Example 4*, except *P*, *S*, and *B* are domestic corporations and members of the *P* consolidated group. Under the matching rule of § 1.1502–13(c)(1), the separate entity attributes of *S*'s intercompany items and *B*'s corresponding items are redetermined to the extent necessary to produce the same effect on consolidated taxable income as if *S* and *B* were divisions of a single corporation and the intercompany transaction was a transaction between divisions. If *S* and *B* were divisions of a single corporation, the transfer of *N* stock on January 3, 2000 would be ignored for tax purposes, and the corporation would be treated as selling that stock only in 2008. Thus, the corporation's entire $45 loss would have been allocated against U.S. source income under paragraph (a)(1) of this section because a dividend recapture amount was not received during the corporation's recapture period. Accordingly, *S*'s $20 loss and *B*'s $25 loss are allocated to reduce U.S. source income.

(2) *Exception for inventory.* This section does not apply to loss

recognized with respect to stock described in section 1221(1).

(3) *Exception for stock in an S corporation.* This section does not apply to loss recognized with respect to stock in an S corporation (as defined in section 1361).

(4) *Anti-abuse rules*—(i) *Transactions involving built-in losses.* If one of the principal purposes of a transaction is to change the allocation of a built-in loss with respect to stock by transferring the stock to another person, qualified business unit (within the meaning of section 989(a)), office or other fixed place of business, or branch that subsequently recognizes the loss, the loss shall be allocated by the transferee as if it were recognized with respect to the stock by the transferor immediately prior to the transaction. If one of the principal purposes of a change of residence is to change the allocation of a built-in loss with respect to stock, the loss shall be allocated as if the change of residence had not occurred. If one of the principal purposes of a transaction is to change the allocation of a built-in loss with respect to stock (or other personal property) by converting the original property into other property and subsequently recognizing loss with respect to such other property, the loss shall be allocated as if it were recognized with respect to the original property immediately prior to the transaction. Transactions subject to this paragraph shall include, without limitation, reorganizations within the meaning of section 368(a), liquidations under section 332, transfers to a corporation under section 351, transfers to a partnership under section 721, transfers to a trust, distributions by a partnership, distributions by a trust, or transfers to or from a qualified business unit, office or other fixed place of business. A person may have a principal purpose of affecting loss allocation even though this purpose is outweighed by other purposes (taken together or separately).

(ii) *Offsetting positions.* If a taxpayer recognizes loss with respect to stock and the taxpayer (or any person described in section 267(b) (after application of section 267(c)), 267(e), 318 or 482 with respect to the taxpayer) holds (or held) offsetting positions with respect to such stock with a principal purpose of recognizing foreign source income and United States source loss, the loss will be allocated and apportioned against such foreign source income. For purposes of this paragraph (b)(4)(ii), positions are offsetting if the risk of loss of holding one or more positions is substantially diminished by holding one or more other positions.

(iii) *Matching rule.* [Reserved] For further guidance, see § 1.865–2T(b)(4)(iii).

(iv) *Examples.* The application of this paragraph (b)(4) may be illustrated by the following examples. No inference is intended regarding the application of any other Internal Revenue Code section or judicial doctrine that may apply to disallow or defer the recognition of loss. The examples are as follows:

Example 1. (i) *Facts.* On January 1, 2000, *P*, a domestic corporation, owns all of the stock of *N1*, a controlled foreign corporation, which owns all of the stock of *N2*, a controlled foreign corporation. *N1*'s basis in the stock of *N2* exceeds its fair market value, and any loss recognized by *N1* on the sale of *N2* would be allocated under paragraph (a)(1) of this section to reduce foreign source passive limitation earnings and profits of *N1*. In contemplation of the sale of *N2* to an unrelated purchaser, *P* causes *N1* to liquidate with principal purposes of recognizing the loss on the *N2* stock and allocating the loss against U.S. source income. *P* sells the *N2* stock and *P* recognizes a loss.

(ii) *Loss allocation.* Because one of the principal purposes of the liquidation was to transfer the stock to *P* in order to change the allocation of the built-in loss on the *N2* stock, under paragraph (b)(4)(i) of this section the loss is allocated against *P*'s foreign source passive limitation income.

Example 2. (i) *Facts.* On January 1, 2000, *P*, a domestic corporation, forms *N* and *F*, foreign corporations, and contributes $1,000 to the capital of each. *N* and *F* enter into offsetting positions in financial instruments that produce financial services income. Holding the *N* stock substantially diminishes *P*'s risk of loss with respect to the *F* stock (and vice versa). *P* holds *N* and *F* with a principal purpose of recognizing foreign source income and U.S. source loss. On March 31, 2000, when the financial instrument held by *N* is worth $1,200 and the financial instrument held by *F* is worth $800, *P* sells its *F* stock and recognizes a $200 loss.

(ii) *Loss allocation.* Because *P* held an offsetting position with respect to the *F* stock with a principal purpose of recognizing foreign source income and U.S. source loss, the $200 loss is allocated against foreign source financial services income under paragraph (b)(4)(ii) of this section.

(c) *Loss recognized by partnership.* A partner's distributive share of loss recognized by a partnership shall be allocated and apportioned in accordance with this section as if the partner had recognized the loss. If loss is attributable to an office or other fixed place of business of the partnership within the meaning of section 865(e)(3), such office or fixed place of business shall be considered to be an office of the partner for purposes of this section.

(d) *Definitions*—(1) *Terms defined in § 1.861–8.* See § 1.861–8 for the meaning of *class of gross income, statutory grouping of gross income,* and *residual grouping of gross income.*

(2) *Dividend recapture amount.* A dividend recapture amount is a dividend (except for an amount treated as a dividend under section 78), an inclusion described in section 951(a)(1)(A)(i) (but only to the extent attributable to a dividend (including a dividend under section 964(e)(1)) included in the earnings of a controlled foreign corporation (held directly or indirectly by the person recognizing the loss) that is included in foreign personal holding company income under section 954(c)(1)(A)) and an inclusion described in section 951(a)(1)(B).

(3) *Recapture period.* A recapture period is the 24-month period preceding the date on which a taxpayer recognizes a loss with respect to stock, increased by any period of time in which the taxpayer has diminished its risk of loss in a manner described in section 246(c)(4) and the regulations thereunder and by any period in which the assets of the corporation are hedged against risk of loss with a principal purpose of enabling the taxpayer to hold the stock without significant risk of loss until the recapture period has expired.

(4) *United States resident.* See section 865(g) and the regulations thereunder for the definition of United States resident.

(e) *Effective date*—(1) *In general.* This section is effective for loss recognized on or after January 11, 1999. For purposes of this paragraph (e), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account.

(2) *Application to prior periods.* A taxpayer may apply the rules of this section to losses recognized in any taxable year beginning on or after January 1, 1987, and all subsequent years, provided that—

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section and § 1.865–2T for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 1999; and

(ii) The taxpayer makes appropriate adjustments to eliminate any double benefit arising from the application of this section to years that are not open for assessment.

(3) *Examples.* The rules of this paragraph (e) may be illustrated by the following examples:

Example 1. (i) *P*, a domestic corporation, has a calendar taxable year. On March 10, 1985, *P* recognizes a $100 capital loss on the sale of *N*, a foreign corporation. Pursuant to sections 1211(a) and 1212(a), the loss is not allowed in 1985 and is carried over to the 1990 taxable year. The loss is allocated

against foreign source income under § 1.861–8(e)(7). In 1999, *P* chooses to apply this section to all losses recognized in its 1987 taxable year and in all subsequent years.

(ii) Allocation of the loss on the sale of *N* is not affected by the rules of this section because the loss was recognized in a taxable year that did not begin after December 31, 1986.

Example 2. (i) *P*, a domestic corporation, has a calendar taxable year. On March 10, 1988, *P* recognizes a $100 capital loss on the sale of *N*, a foreign corporation. Pursuant to sections 1211(a) and 1212(a), the loss is not allowed in 1988 and is carried back to the 1985 taxable year. The loss is allocated against foreign source income under § 1.861–8(e)(7) on *P*'s federal income tax return for 1985 and increases an overall foreign loss account under § 1.904(f)-1.

(ii) In 1999, *P* chooses to apply this section to all losses recognized in its 1987 taxable year and in all subsequent years. Consequently, the loss on the sale of *N* is allocated against U.S. source income under paragraph (a)(1) of this section. Allocation of the loss against U.S. source income reduces *P's* overall foreign loss account and increases *P's* tax liability in 2 years: 1990, a year that will not be open for assessment on June 30, 1999, and 1997, a year that will be open for assessment on June 30, 1999. Pursuant to paragraph (e)(2)(i) of this section, *P* must file an amended federal income tax return that reflects the rules of this section for 1997, but not for 1990.

Example 3. (i) *P*, a domestic corporation, has a calendar taxable year. On March 10, 1989, *P* recognizes a $100 capital loss on the sale of *N*, a foreign corporation. The loss is allocated against foreign source income under § 1.861–8(e)(7) on *P's* federal income tax return for 1989 and results in excess foreign tax credits for that year. The excess credit is carried back to 1988, pursuant to section 904(c). In 1999, *P* chooses to apply this section to all losses recognized in its 1989 taxable year and in all subsequent years. On June 30, 1999, *P's* 1988 taxable year is closed for assessment, but *P's* 1989 taxable year is open with respect to claims for refund.

(ii) Because *P* chooses to apply this section to its 1989 taxable year, the loss on the sale of *N* is allocated against U.S. source income under paragraph (a)(1) of this section. Allocation of the loss against U.S. source income would have permitted the foreign tax credit to be used in 1989, reducing *P's* tax liability in 1989. Nevertheless, under paragraph (e)(2)(ii) of this section, because the credit was carried back to 1988, *P* may not claim the foreign tax credit in 1989.

Par. 6. Section 1.865–2T is added immediately after § 1.865–2, to read as follows:

§ 1.865–2T Loss with respect to stock (Temporary).

(a) through (b)(4)(ii) [Reserved] For further guidance, see § 1.865–2(a) through (b)(4)(ii).

(b)(4)(iii) *Matching rule.* To the extent a taxpayer (or a person described in section 1059(c)(3)(C) with respect to the taxpayer) recognizes foreign source income for tax purposes that results in the creation of a corresponding loss with respect to stock, the loss shall be allocated and apportioned against such income. This paragraph (b)(4)(iii) shall not apply to the extent a loss is related to a dividend recapture amount and § 1.865–2(b)(1)(ii) (de minimis exception) or (b)(1)(iii) (passive dividend exception) exempts the loss from § 1.865–2(b)(1)(i) (dividend recapture rule), unless the stock is held with a principal purpose of producing foreign source income and corresponding loss.

(iv) *Examples.* The application of this paragraph (b)(4) may be illustrated by the following examples. No inference is intended regarding the application of any other Internal Revenue Code section or judicial doctrine that may apply to disallow or defer the recognition of loss. The examples are as follows:

Examples 1 and 2. [Reserved] For further guidance, see § 1.865–2(b)(4)(iv).

Example 3. (i) *Facts.* On January 1, 1999, *P* and *Q*, domestic corporations, form *R*, a domestic partnership. The corporations and partnership use the calendar year as their taxable year. *P* contributes $900 to *R* in exchange for a 90-percent partnership interest and *Q* contributes $100 to *R* in exchange for a 10-percent partnership interest. *R* purchases a dance studio in country *X* for $1,000. On January 2, 1999, *R* enters into contracts to provide dance lessons in Country *X* for a 5-year period beginning January 1, 2000. These contracts are prepaid by the dance studio customers on December 31, 1999, and *R* recognizes foreign source taxable income of $500 from the prepayments (*R's* only income in 1999). *P* takes into income its $450 distributive share of partnership taxable income. On January 1, 2000, *P's* basis in its partnership interest is $1,350 ($900 from its contribution under section 722, increased by its $450 distributive share of partnership income under section 705). On September 22, 2000, *P* contributes its *R* partnership interest to *S*, a newly-formed domestic corporation, in exchange for all the stock of *S*. Under section 358, *P's* basis in *S* is $1,350. On December 1, 2000, *P* sells *S* to an unrelated party for $1050 and recognizes a $300 loss.

(ii) *Loss allocation.* Because *P* recognized foreign source income for tax purposes that resulted in the creation of a corresponding loss with respect to the *S* stock, the $300 loss is allocated against foreign source income under paragraph (b)(4)(iii) of this section.

Example 4. (i) *Facts.* On January 1, 2000, *P*, a domestic corporation that uses the calendar year as its taxable year forms *N*, a foreign corporation. *P* contributes $1,000 to the capital of *N* in exchange for 100 shares of common stock. *P* contributes an additional $1,000 to the capital of *N* in exchange for 100 shares of preferred stock. Each preferred share is entitled to 15-percent dividend but is redeemable by *N* on or after January 1, 2010, for $1. Prior to January 10, 2005, *P* receives a total of $750 of distributions from *N* with respect to its preferred shares, which *P* treats as foreign source general limitation dividends. On January 10, 2005, *P* sells its 100 preferred shares in *N* to an unrelated purchaser for $600. Assume that this arrangement is not recharacterized under Notice 97–21 (1997–1 C.B. 407).

(ii) *Loss allocation.* Because *P* recognized foreign source income for tax purposes that resulted in the creation of a corresponding loss with respect to the *N* stock, the $400 loss is allocated against foreign source general limitation income under paragraph (b)(4)(iii) of this section.

Example 5. (i) *Facts.* On January 1, 2000, *P*, a domestic corporation that uses the calendar year as its taxable year, and *F*, a newly-formed controlled foreign corporation wholly-owned by *P*, form *N*, a foreign corporation. *P* contributes $1,000 to the capital of *N* in exchange for 100 shares of common stock and $1,000 to the capital of *F* in exchange for 100 shares of common stock. *F* contributes LC1,000 to the capital of *N* in exchange for 100 shares of preferred stock. Each preferred share is entitled to a 65-percent LC dividend. At the time of the contributions, $1=LC1. The LC is expected to depreciate significantly in relation to the U.S. dollar. Prior to June 10, 2005, *P* receives a total of $1,900 of distributions from *F*, which it treats as foreign source general limitation dividends. On June 10, 2005, the *N* preferred stock has a fair market value of $25 and *P* sells *F* for $25 to an unrelated person. Assume that this arrangement is not recharacterized under Notice 97–21 (1997–1 C.B. 407).

(ii) *Loss allocation.* Because *P* recognized foreign source income for tax purposes that resulted in the creation of a corresponding loss with respect to the *F* stock, the $975 loss is allocated against foreign source general limitation income under paragraph (b)(4)(iii) of this section.

Example 6. (i) *Facts.* On January 1, 1998, *P*, a domestic corporation, purchases *N*, a foreign corporation, for $1000. On March 1, 1998, *N* sells its operating assets, distributes a $400 general limitation dividend to *P*, and invests its remaining $600 in short term government securities. *N* earns interest income from the securities. The income constitutes subpart F income that is included in *P*'s income under section 951, increasing *P*'s basis in the *N* stock under section 961(a). On March 1, 2002, *P* sells *N* and recognizes a $400 loss.

(ii) *Loss allocation.* The $400 dividend received by *P* resulted in a $400 built-in loss in the *N* stock, which was locked in for *P*'s four-year holding period. Because *P* recognized foreign source income for tax purposes that resulted in the creation of a corresponding loss with respect to the *N* stock, under paragraph (b)(4)(iii) of this section the $400 loss is allocated against foreign source general limitation income.

(e) *Effective date*—(1) *In general.* This section is effective for loss recognized on or after January 11, 1999. For purposes of this paragraph (e), loss that is recognized but deferred (for example, under section 267 or 1092) shall be treated as recognized at the time the loss is taken into account. This

section shall cease to be effective January 8, 2002.

(2) *Application to prior periods.* A taxpayer may apply the rules of this section to losses recognized in any taxable year beginning on or after January 1, 1987, and all subsequent years, provided that—

(i) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section and § 1.865–2 for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 1999; and

(ii) The taxpayer makes appropriate adjustments to eliminate any double benefit arising from the application of this section to years that are not open for assessment.

Par. 7. Section 1.904–0 is amended by revising the entry for § 1.904–4(c)(2)(i) and (ii) and adding entries for paragraphs (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii)(A) and (c)(2)(ii)(B) to read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) * * *

(2) * * *

(i) Effective dates.

(A) In general.

(B) Application to prior periods.

(ii) Grouping rules.

(A) Initial allocation and apportionment of deductions and taxes.

(B) Reallocation of loss groups.

* * * * *

Par. 8. Section 1.904–4 is amended by:

1. Revising paragraphs (c)(1) and (c)(2),

2. Revising paragraph (c)(3)(iii),

3. Adding paragraph (c)(3)(iv), and

4. Amending paragraph (c)(8) by adding *Example 11*, *Example 12* and *Example 13*.

5. The additions and revisions read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) *High-taxed income*—(1) *In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses, losses and other deductions of the United States person to that income under paragraph (c)(2)(ii) of this section, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 or 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph (c), income that would otherwise be passive income is determined to be high-taxed income, such income shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904–6. If, after application of this paragraph (c), passive income is zero or less than zero, any taxes imposed on the passive income shall be considered related to general limitation income. For additional rules regarding losses related to passive income, see paragraph (c)(2) of this section. Income and taxes shall be translated at the appropriate rates, as determined under sections 986, 987 and 989 and the regulations under those sections, before application of this paragraph (c). For purposes of allocating taxes to groups of income, United States source passive income is treated as any other passive income. In making the determination whether income is high-taxed, however, only foreign source income, as determined under United States tax principles, is relevant. See paragraph (c)(8) *Examples* 10 through 13 of this section for examples illustrating the application of this paragraph (c)(1) and paragraph (c)(2) of this section.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income*—(i) *Effective dates*—(A) *In general.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3)(i) and (ii), (c)(4), and (c)(5) of this section apply to taxable years beginning after December 31, 1987. Except as provided in paragraph (c)(2)(i)(B) of this section, the rules of paragraph (c)(3)(iii) apply to taxable years beginning after December 31, 1987, and ending before December 31, 1998, and the rules of paragraph (c)(3)(iv) apply to taxable years ending on or after December 31, 1998. See Notice 87–6 (1987–1 C.B.417) for the grouping rules applicable to taxable years beginning after December 31, 1986 and before January 1, 1988. The fourth sentence of paragraph (c)(2)(ii)(A) and paragraph (c)(2)(ii)(B) of this section are effective for taxable years beginning after March 12, 1999.

(B) *Application to prior periods.* A taxpayer may apply the rules of paragraph (c)(3)(iv) to any taxable year beginning after December 31, 1991, and all subsequent years, provided that—

(*1*) The taxpayer's tax liability as shown on an original or amended tax return is consistent with the rules of this section for each such year for which the statute of limitations does not preclude the filing of an amended return on June 30, 1999; and

(*2*) The taxpayer makes appropriate adjustments to eliminate any double benefit arising from the application of this section to years that are not open for assessment.

(ii) *Grouping rules*—(A) *Initial allocation and apportionment of deductions and taxes.* For purposes of determining whether passive income is high-taxed, expenses, losses and other deductions shall be allocated and apportioned initially to each of the groups of passive income (described in paragraphs (c)(3), (4), and (5) of this section) under the rules of §§ 1.861–8 through 1.861–14T and 1.865–1T through 1.865–2T. Taxpayers that allocate and apportion interest expense on an asset basis may nevertheless apportion passive interest expense among the groups of passive income on a gross income basis. Foreign taxes are allocated to groups under the rules of § 1.904-6(a)(iii). If a loss on a disposition of property gives rise to foreign tax (i.e., the transaction giving rise to the loss is treated under foreign law as having given rise to a gain), the foreign tax shall be allocated to the group of passive income to which gain on the sale would have been assigned under paragraph (c)(3) or (4) of this section. A determination of whether passive income is high-taxed shall be made only after application of paragraph (c)(2)(ii)(B) of this section (if applicable).

(B) *Reallocation of loss groups.* If, after allocation and apportionment of expenses, losses and other deductions under paragraph (c)(2)(ii)(A) of this section, the sum of the allocable deductions exceeds the gross income in one or more groups, the excess deductions shall proportionately reduce income in the other groups (but not below zero).

(3) * * *

(iii) For taxable years ending before December 31, 1998 (except as provided in paragraph (c)(2)(i)(B) of this section), all passive income received during the taxable year that is subject to no withholding tax shall be treated as one item of income.

(iv) For taxable years ending on or after December 31, 1998, all passive income received during the taxable year that is subject to no withholding tax or other foreign tax shall be treated as one item of income, and all passive income received during the taxable year that is subject to no withholding tax but is subject to a foreign tax other than a withholding tax shall be treated as one item of income.

* * * * *

(8) * * *

Example 11. In 2001, *P*, a U.S. citizen with a tax home in Country *X*, earns the following items of gross income: $400 of foreign source, passive limitation interest income not subject to foreign withholding tax but subject to Country *X* income tax of $100, $200 of foreign source, passive limitation royalty income subject to a 5 percent foreign withholding tax (foreign tax paid is $10), $1,300 of foreign source, passive limitation rental income subject to a 25 percent foreign withholding tax (foreign tax paid is $325), $500 of foreign source, general limitation income that gives rise to a $250 foreign tax, and $2,000 of U.S. source capital gain that is not subject to any foreign tax. *P* has a $900 deduction allocable to its passive rental income. *P*'s only other deduction is a $700 capital loss on the sale of stock that is allocated to foreign source passive limitation income under § 1.865–2(a)(3)(i). The $700 capital loss is initially allocated to the group of passive income subject to no withholding tax but subject to foreign tax other than withholding tax. The $300 amount by which the capital loss exceeds the income in the group must be reapportioned to the other groups under paragraph (c)(2)(ii)(B) of this section. The royalty income is thus reduced by $100 to $100 ($200 − ($300 × (200/600))) and the rental income is thus reduced by $200 to $200 ($400 − ($300 × (400/600))). The $100 royalty income is not high-taxed and remains passive income because the foreign taxes do not exceed the highest United States rate of tax on that income. Under the high-tax kick-out, the $200 of rental income and the $325 of associated foreign tax are assigned to the general limitation category.

Example 12. The facts are the same as in *Example 11* except the amount of the capital loss that is allocated under § 1.865–2(a)(3)(i) and paragraph (c)(2) of this section to the group of foreign source passive income subject to no withholding tax but subject to foreign tax other than withholding tax is $1,200. Under paragraph (c)(2)(ii)(B) of this section, the excess deductions of $800 must be reapportioned to the $200 of net royalty income subject to a 5 percent withholding tax and the $400 of net rental income subject to a 15 percent or greater withholding tax. The income in each of these groups is reduced to zero, and the foreign taxes imposed on the rental and royalty income are considered related to general limitation income. The remaining loss of $200 constitutes a separate limitation loss with respect to passive income.

Example 13. In 2001, *P*, a domestic corporation, earns a $100 dividend that is foreign source passive limitation income subject to a 30-percent withholding tax. A foreign tax credit for the withholding tax on the dividend is disallowed under section 901(k). A deduction for the tax is allowed, however, under sections 164 and 901(k)(7). In determining whether *P*'s passive income is high-taxed, the $100 dividend and the $30 deduction are allocated to the first group of income described in paragraph (c)(3)(iv) of this section (passive income subject to no withholding tax or other foreign tax).

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 15, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–149 Filed 1–8–99; 8:45 am]

BILLING CODE 3830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD08–98–073]

RIN 2115–AE47

Temporary Drawbridge Regulation; Illinois Waterway, Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7, Illinois Waterway. The drawbridges, with the exception of the Jefferson Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 9 a.m. and 4:15 to 5:15 p.m. Monday through Friday. On Saturdays, the drawbridges, save the Jefferson Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 8:30 a.m. and 4:15 to 5:15 p.m. This temporary rule is issued to facilitate land traffic management while the Jefferson Street Bridge remains in the open-to-navigation position for emergency repairs.

DATES: This temporary rule is effective from 7:30 a.m. December 3, 1998 until 7:30 a.m. on February 1, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1998, the Jefferson Street Bridge, mile 287.9, Illinois Waterway in Joliet, Illinois was struck and seriously damaged by a vessel. The allision requires the Jefferson Street bridge to remain in the open-to-navigation position until repairs are completed. It is estimated that it will take three months until the repairs are complete. The Jefferson Street Bridge is one of five bascule leaf drawbridges within Joliet that carry vehicular traffic across the Illinois Waterway. The current regulations permits the bridges to remain closed to navigation during commuter hours of 7:30 a.m. to 8:30 a.m. and 4:15 p.m. to 5:15 p.m. Monday through Saturday. Damage to the Jefferson Street Bridge prevents its use by highway traffic and has increased traffic levels on the other bridges and travel time between bridges. The temporary rule was requested by the Illinois Department of Transportation in order to accommodate the additional vehicular traffic that has been diverted to the four remaining operable bridges.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists for making this rule effective in less than 30 days from publication since the change has been implemented to address an emergency situation. Specifically, the extensive damage to the Jefferson Street Bridge caused by a vessel allision. Thus, following normal rule making procedures would be impractical. Delaying implementation of the regulation will not adversely impact navigation; however, it would result in unnecessary prolonged traffic management problems within the City of Joliet, Illinois.

Discussion of Temporary Rule

The five Joliet area drawbridges have a minimum vertical clearance of 16.5 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draws of all Illinois Waterway bridges within Joliet open on signal for passage of river

traffic, except that they need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Saturday. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Extending the morning drawbridge closure period by 30 minutes during the week now until February 1, 1999, will not adversely impact navigation. It will, however, significantly facilitate traffic management in the City of Joliet.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of the rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) is unnecessary. This is because river traffic will be extremely limited by lock closures and river ice during the period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard was required to consider whether this action will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

The temporary rule only impacts vessel traffic for one half hour a day Monday through Friday during the late fall and winter months. This timeframe is a very inactive period for commercial navigation. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph (32)(a) of Commandant Instruction M16475.1C this temporary rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. Sec. 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. Effective 7:30 a.m. on December 3, 1998, through 7:29 a.m. on February 1, 1999, paragraph (c) of § 117.393 is suspended and a new paragraph (e) is added to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(c) The draws of the McDonough Street Bridge, mile 287.3; Cass Street Bridge, Mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 9 a.m. and from 4:15 p.m. to 5:15 p.m. Monday through Friday. On Saturday the draws need not open from 7:30 a.m. to 8:30 a.m. and from 4:15 p.m. to 5:15 p.m.

Dated December 3, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 99–388 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0106a; FRL–6211–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern for approval of Mojave Desert Air Quality Management District's (MDAQMD) Rules 474, 475, and 476 and recision of MDAQMD Rule 68. These rules control oxides of nitrogen (NO_X) from fuel burning equipment, electric power generating equipment, and steam generating equipment. This action will replace the current version of three rules now in the SIP and remove one rule from the SIP. The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: These rules are effective on March 12, 1999 without further notice, unless EPA receives adverse comments by February 10, 1999. If EPA received such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: MDAQMD's Rule 474, Fuel Burning Equipment; Rule 475, Electric Power Generating Equipment; and Rule 476, Steam Generating Equipment. The rule being removed from the SIP is MDAQMD's Rule 68, Fuel Burning Equipment—Oxide of Nitrogen. These rules were submitted by the California Air Resources Board (CARB) to EPA on March 10, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, proposed rule should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Southeast Desert Air Basin managed by MDAQMD is classified as severe;[1] therefore this area was subject to the RACT requirements of section 182(b)(2), cited below, and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

On March 10, 1998, the State of California submitted to EPA MDAQMD's Rule 474, Fuel Burning Equipment; Rule 475, Electric Power Generating Equipment; and Rule 476, Steam Generating Equipment; which were adopted by MDAQMD on August 25, 1998. These submitted rules were found to be complete on May 21, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[2] and are being finalized for approval into the SIP. This document also addresses the State of California's request that Rule 68, Fuel Burning Equipment—Oxides of Nitrogen be removed from the SIP. By today's document, EPA is taking direct final action to approve this submittal. This final action will replace the existing versions of Rules 474, 475, and 476 in the SIP and remove Rule 68 from the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. MDAQMD's Rules 474, 475, and 476 control emissions of NO_X from fuel burning equipment, electric power generating equipment, and steam generating equipment. These rules were adopted as part of MDAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 474 limits NO_X emissions from non-mobile, fuel burning equipment. The rule applies to new and existing equipment with a heat input rate (HIR) of more than 1,775 million Btu per hour (MMBtu/hr). Equipment burning gaseous fuel must meet a NO_X emission limit of 125 parts per million (ppm) by volume, and equipment burning liquid or solid fuel must meet an emission limit of 225 ppm. All emission concentrations are corrected to 3.00 percent by volume stack-gas oxygen on dry basis.

The current SIP approved version of Rule 474 applies to any non-mobile fuel

[1] The Southeast Desert Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

burning equipment and specifies NO_X emission limits based on HIR in million British Thermal Unit per hour (MMBtu/hr) as follows: (1) equipment with HIR of 555 or more but less than 1786 MMBtu/hr, the emission limits are set at 300 ppm (gas-fired) and 400 ppm (liquid/solid fuel-fired); (2) equipment with HIR of 1786 or more but less than 2143 MMBtu/hr, the emission limits are set at 225 ppm (gas-fired) and 325 ppm (liquid/solid fuel-fired); and (3) equipment with HIR of 2143 MMBtu/hr or more are set at 125 ppm (gas-fired) and 225 ppm (liquid/solid fuel-fired).

The submitted version of Rule 474 specifies NO_X emission limits at 125 ppm ≈ 0.15 lbs/MMBtu (heat input rate basis) for gas-fired and 225 ppm ≈ 0.28 lbs/MMBtu for liquid-fired or solid fuel-fired. These emission limits are within the emission limit ranges (0.20 to 0.50 lbs/MMBtu) specified by EPA for utility boilers and which were previously determined to meet RACT requirements. Further, the rule emission limits are the same emission limits in Rule 68 which apply to equipment with an HIR over 1775 MMBtu/hr.

Other provisions of Rule 474 have also changed since the SIP revision in 1978. MDAQMD added requirements for emissions when using a combination of gaseous fuel and liquid and/or solid fuels. It also added provisions for applicability, definitions, exemptions, monitoring and records, test methods, and compliance tests. All these provisions are more stringent than the SIP version.

The current SIP approved version of Rule 475 for equipment with a HIR of more than 50 MMBtu/hr, sets the NO_X emission limits at 80 ppm by volume when burning gaseous fuel, 160 ppm when burning liquid fuel, and 225 ppm when burning solid fuel. The rule also sets emission limits for PM at 5 kilograms per hour (11 lbs/hr) and 23 milligrams per cubic meter (0.01 grain/scf). Both PM limits must be met by all equipment. All limits are referenced at 3 percent stack-gas oxygen on dry basis.

The submitted version of Rule 475 limits NO_X emissions from non-mobile, electric power generating equipment with a maximum rated heat input of more than 50 MMBtu/hr. Rule 475 sets emission limit of 42 ppm NO_X, 5 kilograms per hour (11 lbs/hr) PM, and 7.60 milligrams per cubic meter (0.003 grains/scf) PM referenced at 15% stack-gas oxygen for gas turbines. All other electric power generating equipment must meet existing SIP emission limits for NO_X using various types of fuels which are set at 80 ppm (gas-fired); 160 ppm (liquid-fired); 225 ppm (solid fuel-fired); and the weighted average when combination fuels are used. These NO_X limits are within the emission limit ranges (0.20 to 0.50 lb/MMBtu) specified by EPA for utility boilers. Rule 475 also incorporates the existing PM emission limits of 5 kg per hour (11 lbs/hr) except for the companion emission limit (7.6 milligrams per cubic meter (0.003 grains/scf)) for gas turbines which is more stringent than what is currently in the SIP. Therefore, the submitted Rule 475 is more stringent than the SIP version because of the added provisions of more stringent emission limits for gas turbines, more stringent PM limits, and addition of enforceability measures such as applicability, definitions, exemptions, monitoring and records, test methods, and compliance schedule.

The current SIP approved Rule 476 restricts NO_X emissions to 125 ppm when burning gaseous fuel and 225 ppm when burning liquid or solid fuel from any steam generating equipment having a heat input rate of more than 12.5 million kilogram calories (50 MMBtu/hr). The PM emission limits are also set at 5 kilograms per hour (ll lbs/hr) and 23 milligrams per cubic meter (0.01 grain/scf).

Rule 476 was significantly changed since the SIP revision in 1978. MDAQMD added requirements for determining emissions when using combination of gaseous fuel and liquid and/or solid fuels. MDAQMD also added provisions for applicability, definitions, exemptions, monitoring and records, test methods, and compliance tests.

The NO_X emission limits of 125 ppm ≈ 0.15 lbs/MMBtu (heat input rate basis) for gas-fired and 225 ≈ ppm 0.28 lbs/MMBtu for oil-fired or solid fuel fired are within the emission limits ranges (0.20 to 0.50 lbs/MMBtu) specified by EPA for utility boilers. The PM emission limits of 5 kilograms per hour (ll lbs/hr) and 23 milligrams per cubic meter (0.01 grain/scf) were previously determined to meet RACT requirements and are currently in the SIP. The revised rule is also more stringent than the SIP approved version of the rule because of the addition of enforceability measures mentioned above.

MDAQMD's Rule 68, Fuel Burning Equipment—Oxides of Nitrogen, was adopted in January 7, 1972 to control NO_X emissions from non-mobile fuel burning equipment or other contrivances having heat input rate of more than 1775 million Btu per hour (MMBtu/hr) within the Southeast Desert Air Basin. Although Rule 68 has been rescinded by Southern California APCD, the predecessor of MDAQMD, it has been retained in the SIP because EPA previously determined Rule 474 (same title), the intended replacement, did not regulate NO_X emissions from non-steam generating equipment as did previous Rule 68. To correct this deficiency, MDAQMD amended Rule 474, Fuel Burning Equipment, to cover any equipment rated over 1775 MMBtu/hr; Rule 475, Electric Power Generating Equipment, to cover any power generating equipment rated over 50 MMBtu/hr; and Rule 476, Steam Generating Equipment, to cover any steam generating equipment rated over 500 MMBtu/hr. Altogether these amended rules cover the scope and emission limitations Rule 68 currently has in the SIP. Consequently, MDAQMD is rescinding Rule 68 because it no longer serves to control emissions and is therefore extraneous. The removal of Rule 68 from the SIP is consistent with EPA's policy requirements and removes an extraneous rule.

A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for Rules 68, 474, 475, and 476 dated September 24, 1998.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, MDAQMD's Rule 474, Fuel Burning Equipment; Rule 475, Electric Power Generating Equipment; and Rule 476, Steam Power Generating Equipment are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble. Furthermore, EPA is removing applicable Rule 68 consistent with the requirements of sections 110(l) and 193.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 12, 1999

without further notice unless the Agency receives adverse comments by February 10, 1999.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Any parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 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. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under 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 rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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 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, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the **Federal Register** on July 1, 1982.

Dated: December 14, 1998.

Lauren Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (6)(xv)(A) and (254)(i)(H)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(xv) San Bernardino County Air Pollution Control District.

(A) Previously approved on December 21, 1975 and now deleted without replacement Rule 68.

* * * * *

(254) * * *

(i) * * *

(H) Mojave Desert Air Quality Management District.

(*1*) Rules 474, 475, and 476 adopted on August 25, 1997.

* * * * *

[FR Doc. 99–80 Filed 1–8–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7277]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Orange	City of Apopka	November 20, 1998, November 27, 1998, *Orlando Sentinel*.	Mr. Jay Davoll, P.E., City of Apopka, Community Development Department, P.O. Box 1229, Apopka, Florida 32704–1229.	February 25, 1999	120180 C
Orange	Unincorporated Areas.	November 20, 1998, November 27, 1998, *Orlando Sentinel*.	Dr. M. Krishnamurthy, P.E., Manager, Orange County Public Works Division, Stormwater Management Division, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	February 25, 1999	120179 B
Georgia: Cobb	City of Marietta	December 11, 1998, December 18, 1998, *Marietta Daily Journal*.	The Honorable Ansley Meaders, Mayor of the City of Marietta, P.O. Box 609, Marietta, Georgia 30061.	March 18, 1999	130226 F
Illinois:					
Cook	Village of Rosemont.	November 25, 1998, December 2, 1998, *Franklin Park Herald Journal*.	The Honorable Donald E. Stephens, Mayor of the Village of Rosemont, 9501 West Devon Avenue, Rosemont, Illinois 60018.	November 16, 1998.	170156 C
DuPage	Village of Bensenville.	December 11, 1998, December 18, 1998, *Bensenville Press*.	Mr. John C. Gels, Bensenville Village President, Village Hall 700 West Irving Park Road, Bensenville, Illinois 60106.	March 18, 1999	170200 C
Indiana: Marion	City of Indianapolis.	November 17, 1998, November 24, 1998, *Indianapolis Star*.	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, City-County Building, Suite 2501, Indianapolis, Indiana 46204–3357.	February 22, 1999	180159 D
Maryland: Allegany	Unincorporated Areas.	December 16, 1998, December 23, 1998, *The Cumberland Times-News*.	Mr. Bernard L. Loar, President, Allegany County Board of Commissioners, 701 Kelly Road, Suite 405, Cumberland, Maryland 21502–3401.	March 23, 1999	240001 A
Michigan: Macomb	City of Sterling Heights.	December 13, 1998, December 20, 1998, *The Source*.	The Honorable Richard Notte, Mayor of the City of Sterling Heights, 40555 Utica Road, P.O. Box 8009, Sterling Heights, Michigan 48311–8009.	December 2, 1998	260128 E
Ohio:					
Clark	Village of Enon	November 18, 1998, November 25, 1998, *Springfield News-Sun*.	The Honorable Jerry C. Crane, Mayor of the Village of Enon, P.O. Box 232, Enon, Ohio 45323.	February 13, 1999	390795 C
Fairfield and Franklin.	City of Columbus	November 27, 1998, December 4, 1998, *The Columbus Dispatch*.	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, City Hall, 90 West Broad Street, Columbus, Ohio 43215.	March 4, 1999	390170 G
Franklin	Unincorporated Areas.	November 27, 1998, December 4, 1998, *The Columbus Dispatch*.	Ms. Arlene Shoemaker, President of the Franklin County, Board of Commissioners, 373 South High Street, Columbus, Ohio 43215.	March 4, 1999	390167 G

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

Dated: January 4, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–528 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Decatur (City), Morgan County (FEMA Docket No. 7259)	
Blue Hole Branch:	
Approximately 400 feet downstream of Tomahawk Drive	*569
Approximately 1,400 feet upstream of Tomahawk Drive	*572
Brush Creek:	
Approximately 1.27 miles above confluence with Flint Creek	*561
Approximately 960 feet upstream of Royal Drive	*567
Clark Spring Branch:	
At the confluence with Brush Creek	*566
Approximately 1,450 feet upstream of Montrose Drive SW	*627
Bakers Creek:	
At confluence with Tennessee River	*558
Approximately .27 mile downstream of West Morgan Road	*617
Tributary to Bakers Creek:	
Approximately 900 feet upstream of confluence with Bakers Creek	*598
Approximately 1,460 feet upstream of Gaslight Place	*609
Dry Branch:	
At upstream side of U.S. Highway 22	*559
Approximately 900 feet upstream of Runnymead Avenue SW	*605
Black Branch:	
At the confluence with the Tennessee River	*561
Approximately 950 feet upstream of Regency Boulevard	*567
Betty Rye Branch:	
At confluence with Tennessee River	*559
Approximately 150 feet upstream of Bedford Drive SW	*609
Tennessee River:	
Approximately 4.5 miles downstream of confluence of Bakers Creek	*557
Approximately 200 feet upstream of Interstate Route 65	*562

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City of Decatur Building Department—4th Floor, 402 Lee Street NE, Decatur, Alabama.	
Morgan County (Unincorporated Areas) (FEMA Docket No. 7259)	
Blue Hole Branch:	
Approximately 1,900 feet upstream of the confluence with Flint Creek	*567
Approximately 400 feet downstream of Tomahawk Drive	*569
Bakers Creek:	
Approximately 700 feet downstream of U.S. Highway 72/Joe Wheeler Highway/State Route 20	*567
Approximately 100 feet downstream of West Morgan Road	*620
Tributary to Bakers Creek:	
At the confluence with Bakers Creek	*598
Approximately 175 feet upstream of Old Moulton Road	*605
Dry Branch:	
At confluence with the Tennessee River	*559
Approximately 400 feet downstream of U.S. Highway 72	*559
Betty Rye Branch:	
At confluence with Tennessee River	*559
Approximately 600 feet upstream of Moulton Street West	*573
Tennessee River:	
At downstream county boundary	*557
Approximately 7 miles downstream of U.S. Route 231	*572
Unnamed Tributary to Unnamed No. 3 to Shoal Creek:	
Approximately 125 feet downstream of Roan Road	*660
At upstream side of Private Drive	*662
Maps available for inspection at the Morgan County Courthouse, 302 Lee Street NE, Decatur, Alabama.	
KENTUCKY	
Dover (City), Mason County (FEMA Docket No. 7263)	
Ohio River:	
Approximately 350 feet downstream of the downstream corporate limits	*512
Approximately 4,350 feet upstream of the downstream corporate limits	*513
Maps available for inspection at the City of Dover V.F.D. Building, Lucretia Street, Dover, Kentucky.	
MASSACHUSETTS	
Wilmington (Town), Middlesex County (FEMA Docket No. 7263)	
Lubber's Brook:	
Approximately 0.07 mile upstream of Glen Road	*92
Approximately 0.92 mile upstream of State Route 129	*103
Maps available for inspection at the Wilmington Town Hall, 121 Glen Road, Wilmington, Massachusetts.	
MICHIGAN	
Delta (Charter Township), Eaton County (FEMA Docket No. 7259)	
Miller Creek:	
At the confluence with Grand River	*807
Approximately 0.5 mile upstream of St. Joseph Highway	*850
Spillway Channel:	
At confluence with Miller Creek	*820
At Retention Basin Dam	*832
Maps available for inspection at the Delta Charter Township Hall, 7710 West Saginaw Highway, Lansing, Michigan.	
Ionia (Township), Ionia County (FEMA Docket No. 7255)	
Grand River:	
Approximately 0.4 mile downstream of State Route 66	*644
Approximately 1.7 miles upstream of State Route 66	*646
Maps available for inspection at the Ionia Township Hall, 2664 Nickleplate Road, Ionia, Michigan.	
MINNESOTA	
Centerville (City), Anoka County (FEMA Docket No. 7263)	
Peltier Lake:	
Shoreline within community	*887
Centerville Lake:	
Shoreline within community	*886
Maps available for inspection at the Centerville City Hall, 1880 Main Street, Centerville, Minnesota.	
MISSISSIPPI	
Lexington (City), Holmes County (FEMA Docket No. 7259)	
Black Creek (Before Levee Overtopping):	
Approximately 1.48 miles downstream of State Highway 17 (Yazoo Street)	*190
Approximately 1.66 miles upstream of State Highway 17 (Yazoo Street)	*208
Black Creek (After Levee Overtopping):	
Approximately 1.15 miles upstream of State Highway 17 (Yazoo Street)	*203
Approximately 1.66 miles upstream of State Highway 17 (Yazoo Street)	*206
Maps available for inspection at the Lexington City Hall, 112 Spring Street, Lexington, Mississippi.	
NEW JERSEY	
Point Pleasant Beach (Borough), Ocean County (FEMA Docket No. 7251)	
Atlantic Ocean:	
At the intersection of Griffith Avenue and Arbutus Avenue	*10
At the intersection of Niblick Street and Baltimore Avenue	*10
At intersection of Ocean Avenue and Main Street	#1
Approximately 950 feet east of the intersection of Trenton Avenue and Boston Avenue	*15
Manasquan River:	
Approximately 500 feet northwest of intersection of Cedar and Curtis Avenues	*9
At intersection of Cedar and Curtis Avenues	*9
Maps available for inspection at the Borough of Point Pleasant Beach Construction Office, 2233 Bridge Avenue, Point Pleasant Beach, New Jersey.	
NEW YORK	
Camillus (Town), Onondaga County (FEMA Docket No. 7243)	
Geddes Brook:	
Approximately 40 feet downstream of Gerelock Road	*382
Approximately 1,800 feet upstream of Whedon Road	*508
Ninemile Creek:	
At northeastern corporate limits	*372
Approximately 450 feet upstream of State Route 174	*462
Unnamed Stream near Garden Terrace:	
At the confluence with Ninemile Creek	*382
Approximately 25 feet downstream of Pottery Road	*385
Maps available for inspection at W–M Engineers, P.C., 111 Boxwood Lane, Syracuse, New York 13206.	
Camillus (Village), Onondaga County (FEMA Docket No. 7255)	
Ninemile Creek:	
At northern corporate limits within Village of Camillus	*408

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2,400 feet upstream of Unnamed Stream East	*412
Unnamed Stream East:	
At the confluence with Ninemile Creek	*412
Approximately 300 feet upstream of confluence within Ninemile Creek	*414
Deerfield (Town), Oneida County (FEMA Docket No. 7263)	
West Canada Creek:	
Approximately 0.4 mile downstream of State Routes 28 and 8	*696
At upstream corporate limits	*715
Maps available for inspection at the Deerfield Municipal Building, 6329 Walker Road, Deerfield, New York.	
Poland (Village), Herkimer County (FEMA Docket No. 7263)	
West Canada Creek:	
Approximately 200 feet downstream of CONRAIL bridge	*686
Approximately 650 feet upstream of State Routes 8 and 28	*698
Maps available for inspection at the Poland Village Office, Case Street, Poland, New York.	
Russia (Town), Herkimer County (FEMA Docket No. 7263)	
West Canada Creek:	
Approximately 0.9 mile downstream of State Route 28 (Creek Road)	*698
At Hinckley Dam	*1,230
Maps available for inspection at the Russia Town Hall, Route 28, Poland, New York.	
PENNSYLVANIA	
Bridgeton (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limits	*135
At upstream corporate limits	*147
Maps available for inspection at the Bridgetown Township Zoning Office, 1370 Bridgeton Hill Road, Upper Black Eddy, Pennsylvania.	
Bristol (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 4,500 feet upstream of the confluence of Mill Creek No. 1	*12
At upstream corporate limits	*12
Mill Creek No. 1:	
Approximately 500 feet upstream of Maple Beach Road	*12
At downstream side of Pond Street	*14
Maps available for inspection at the Bristol Borough Municipal Building, 250 Pond Street, Bristol, Pennsylvania.	
Buckingham (Township), Bucks County (FEMA Docket No. 7255)	
Watson Creek:	
Approximately 50 feet downstream of Mill Road	*280
Upstream side of Mill Road	*281
Maps available for inspection at the Buckingham Township Zoning Office, 4613 Hughesian Way, Buckingham, Pennsylvania.	
Durham (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limits	*153
Approximately 960 feet upstream from the confluence of Cooks Creek	*156
Maps available for inspection at the Durham Township Municipal Building, 215 Old Furnace Road, Durham, Pennsylvania.	
Falls (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limit	*13
Approximately 2.3 miles upstream of the confluence of Scott's Creek	*14
Maps available for inspection at the Falls Township Offices, Department of Code Enforcement, 188 Lincoln Highway, Suite 100, Fairless Hills, Pennsylvania.	
Lower Makefield (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 900 feet upstream of downstream corporate limits	*28
At upstream corporate limits	*47
Maps available for inspection at the Lower Makefield Township Building, 1100 Edgewood Road, Yardley, Pennsylvania.	
Morrisville (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 845 feet downstream of U.S. Route 1/Lincoln Highway	*22
Approximately 1,160 feet upstream of Calhoun Road	*27
Maps available for inspection at the Morrisville Municipal Building, 35 Union Street, Morrisville, Pennsylvania.	
New Britain (Township), Bucks County (FEMA Docket No. 7255)	
North Branch Neshaminy Creek:	
Approximately 1,850 feet upstream of Park Avenue	*252
Approximately 0.72 mile upstream of Park Avenue	*259
Cooks Run:	
Approximately 150 feet above confluence with Neshaminy Creek	*233
Approximately 1,420 feet above confluence with Neshaminy Creek	*241
Maps available for inspection at the New Britain Township Hall, 207 Park Avenue, Chalfont, Pennsylvania.	
New Hope (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 1,450 feet upstream of downstream corporate limits	*69
Approximately 260 feet downstream of upstream corporate limits	*72
Aquetong Creek:	
At confluence with Delaware River	*69
Approximately 925 feet upstream of confluence with Delaware River	*69
Maps available for inspection at the New Hope Borough Hall, 41 North Main Street, New Hope, Pennsylvania.	
Nockamixon (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limits	*147
Approximately 300 feet upstream of confluence with Gallows Run	*153
Gallows Run:	
At confluence with Delaware River	*153
Approximately 360 feet downstream of Fire Line Road	*154
Haycock Creek:	
Approximately 1,525 feet downstream of Church Road	*399
At Haycock Run Road	*437

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Nockamixon Township Building, 589 Lake Warren Road, Ferndale, Pennsylvania.	
Northampton (Township), Bucks County (FEMA Docket No. 7255)	
Mill Creek No. 2:	
Approximately 0.4 mile downstream of upstream crossing of Bristol Road	*193
Approximately 0.2 mile downstream of upstream crossing of Bristol Road	*211
Maps available for inspection at the Township of Northampton Zoning Department, 55 Township Road, Richboro, Pennsylvania.	
Plumstead (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limits	*98
At confluence of Tohickon River	*101
Tohickon Creek:	
At confluence with Delaware River	*101
Approximately 0.5 mile upstream of confluence with Delaware River	*101
Maps available for inspection at the Plumstead Township Municipal Building, 5186 Stump Road, Plumsteadville, Pennsylvania.	
Quakertown (Borough), Bucks County (FEMA Docket No. 7255)	
Morgan Creek:	
Approximately 1,220 feet upstream of Dublin Pike	*486
Approximately 1,465 feet upstream of Dublin Pike	*486
Maps available for inspection at the Quakertown Borough Hall, 15–35 North Second Street, Quakertown, Pennsylvania.	
Richland (Township), Bucks County (FEMA Docket No. 7255)	
Licking Creek:	
Approximately 1,500 feet upstream of Main Street	*510
Approximately 2,100 feet upstream of Main Street	*511
Maps available for inspection at the Richland Township Municipal Building, 1328 California Road, Richlandtown, Pennsylvania.	
Riegelsville (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 0.6 mile downstream of Riegelsville Highway Bridge	*157
Upstream corporate limits	*165
Maps available for inspection at the Riegelsville Municipal Building, 615 Easton Road, Riegelsville, Pennsylvania.	
Solebury (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 2,100 feet downstream of confluence with Pidcock Creek	*63
At upstream corporate limits	*98
Coppernose Run:	
At confluence with Delaware River	*94
Approximately 280 feet upstream of confluence with Delaware River	*97
Primrose Creek:	
At confluence with Delaware River	*75
Approximately 150 feet upstream of confluence with Delaware River	*75
Paunacussing Creek:	
At confluence with Delaware River	*97
Approximately 1,450 feet upstream of confluence with Delaware River	*97
Cuttalossa Creek:	
At confluence with Delaware River	*92
Downstream side of dam	*92
Maps available for inspection at the Solebury Township Municipal Building, 3092 Sugan Road, Solebury, Pennsylvania.	
Tinicum (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 575 feet downstream from Point Pleasant Byrum Highway	*101
At upstream corporate limits	*135
Tohickon Creek:	
At confluence with Delaware River	*101
Approximately 0.5 mile upstream of confluence with Delaware River	*101
Cafferty Run:	
Approximately 1,225 feet upstream from confluence with Pennsylvania Canal	*122
Approximately 750 feet downstream from Geigel Hill Road	*122
Maps available for inspection at the Tinicum Township Municipal Building, 163 Municipal Road, Pipersville, Pennsylvania.	
Tullytown (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 0.5 mile upstream of confluence of Martins Creek	*13
Upstream corporate limits	*13
Martins Creek:	
Upstream side of Bristol Pike	*22
Upstream corporate limits	*22
Maps available for inspection at the Borough of Tullytown Municipal Building, 500 Main Street, Tullytown, Pennsylvania.	
Upper Makefield (Township), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
At downstream corporate limits	*47
At upstream corporate limits	*63
Jericho Creek:	
At confluence with Delaware River	*58
Approximately 600 feet upstream of River Road	*58
Pidcock Creek:	
Approximately 300 feet downstream of Windy Bush Road	*107
Maps available for inspection at the Upper Makefield Township Building, 1076 Eagle Road, Newtown, Pennsylvania.	
Yardley (Borough), Bucks County (FEMA Docket No. 7255)	
Delaware River:	
Approximately 1,720 feet downstream of CONRAIL bridge	*40
At upstream corporate limits	*43
Brock Creek:	
At confluence with Delaware River	*42
Approximately 375 feet upstream of Main Stream	*42
Silver Creek No. 1:	
At confluence with Pennsylvania Canal	*41
Approximately 100 feet downstream of Main Street	*41
Maps available for inspection at the Yardley Borough Hall, 56 South Main Street, Yardley, Pennsylvania.	
PUERTO RICO	
Bayamón (Municipality) Bayamón County	
Municipio de Toa Baja:	
Entire shoreline	*2.5 *1.6
Maps available for inspection at the Bayamón Planning Office, Street 4L20, Santa Monica, Bayamón, Puerto Rico.	
Lajas Valley	
Atlantic Ocean Municipio de Cabo Rojo:	
Entire shoreline	*2.8 *1.5

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Municipio de Guanica:	
Entire shoreline	*3.2 *2.4
Municipio de Lajas:	
Entire shoreline	*3.8 *2.0
Lower Rio Grande de Aracibo Basin	
Municipio de Hatillo:	
Entire shoreline	*2.4 *1.8
Municipio de Arecibo:	
Entire shoreline	*2.4 *2.1
Quebrada del Agua	
Approximately 0.75 kilometer upstream of confluence with Caribbean Sea	*2.4 *19.6
Approximately 3.45 kilometers upstream of confluence with Caribbean Sea.	
Rio Anton Ruíz	
Atlantic Ocean: Municipio de Humacao:	
Entire shoreline	*3.3 *2.7
Rio Blanco Basin	
Atlantic Ocean: Municipio de Humacao:	
Entire shoreline	*3.3 *2.3
Rio Camuy Basin	
Municipio de Quebradillas:	
Entire shoreline	*2.4 *2.0
Municipio de Camuy:	
Entire shoreline	*2.4 *1.5
Municipio de Hatillo:	
Entire shoreline	*2.4 *1.8
Rio Canas	
At confluence with Rio Matilde	*11.7
Approximately 0.4 kilometer upstream of Las Delicias bridge	*38.3
Caribbean Sea: Municipio de Juana Diaz:	
Entire shoreline	*3.3 *2.3
Rio Cibulo Basin	
Municipio de Vega Baja:	
Entire shoreline	*2.4 *2.2
Laguna Turtuguero	*1.5
Rio Coamo	
Caribbean Sea: Municipio de Santa Isabel:	
Entire shoreline	*3.9 *2.3
Municipio de Juana Diaz:	
Entire shoreline	*3.2 *2.3
Rio Culebrinos Basin	
Atlantic Ocean: Municipio de Rincon:	
Entire shoreline	*2.5 1.6
Municipio de Aguada:	
Entire shoreline	*2.3 *1.8
Municipio de Aguadilla:	
Entire shoreline	*2.3 *1.5
Rio Daguao Basin	
Atlantic Ocean: Municipio de Ceiba:	
Entire shoreline	*3.6 *2.2
Rio Espiritu Santo Basin	
Atlantic Ocean: Municipio de Loiza:	
Entire shoreline	*.2.6 *2.1
Municipio de Rio Grande:	
Entire shoreline	*2.6 *2.1
Rio Fajardo Basin	
Atlantic Ocean: Isla de Culebra:	
Entire shoreline	*4.3 *2.7 *2.4
Municipio de Luquillo:	
Entire shoreline	*2.7 *1.8
Municipio Falardo:	
Entire shoreline	*3.4 *1.8
Rio Grande de Anasco Basin	
Atlantic Ocean: Municipio de Anasco:	
Entire shoreline	*2.6 *2.0
Rio Grande de Guayanes	
Caribbean Sea: Municipio de Yabucoa:	
Entire shoreline	*1.0 *3.2
Rio Grande de Loiza Basin	
Atlantic Ocean: Municipio de Carolina:	
Entire shoreline	*2.0
Municipio de Loiza:	
Entire shoreline	*2.7
Rio Grande de Manati Basin	
Atlantic Ocean: Municipio de Barceloneta:	
Entire shoreline	*2.4
Municipio de Manati:	
Entire shoreline	*2.4 *1.5
Rios Grande de Patillas and Guamani	
Caribbean Sea: Municipio de Patillas:	
Entire shoreline	*3.4 *2.4
Municipio de Arroyo:	
Entire shoreline	*3.4 *2.2
Municipio de Guayama:	
Entire shoreline	*3.5 *2.4 *2.2
Municipio de Salinas:	
Entire shoreline	*2.7
Rio Grande de Plata Basin	
Atlantic Ocean: Municipio de Dorado:	
Entire shoreline	*2.4 *1.8
Municipio de Vega Alta:	
Entire shoreline	*2.4 *2.2
Rio Guajataca Basin	
Municipio de Isabel:	
Entire shoreline	*2.3 *1.5
Municipio de Quebradillas:	
Entire shoreline	*2.3 *1.5
Municipio de Aguadilla:	
Entire shoreline	*2.3 *1.5 *2.3
Rio Guanajibo	
Atlantic Ocean: Municipio de Cabo Rojo:	
Entire shoreline	*3.0 *1.8
Rios Guayarilla and Tallaboa	
Caribbean Sea: Municipio de Peñuelas:	
Entire shoreline	*3.4 *2.4
Municipio de Guayanilla:	
Entire shoreline	*3.5 *2.2
Rio Humacao	
Atlantic Ocean: Isla de Vieques:	
Entire shoreline	*3.7 *2.4
Municipio de Humacao:	
Entire shoreline	*3.3 *2.3
Rio Majada	
Caribbean Sea: Municipio de Santa Isabel:	
Entire shoreline	*3.9 *2.3
Rio Mameyes Basin	
Atlantic Ocean: Municipio de Rio Grande:	
Entire shoreline	*2.7 *2.0
Rio Manaubo	
Caribbean Sea: Municipio de Maunabo:	
Entire shoreline	*3.2

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Municipio de Patillas:	
Entire shoreline	*3.3 *2.4
Rio Matilde	
Approximately 0.18 kilometer upstream of confluence with Caribbean Sea	*2.4
At confluence of Rio Pastillo and Rio Canas	*11.7
Rios Matilde, Pastillo, Portugues, Canos, Bucana	
Caribbean Sea: De La Ciudad de Ponce:	
Entire shoreline west of Rio Portugues	*3.4 *2.2
Rio Pastillo	
At confluence with Rio Matilde	*11.7
Approximately 0.13 kilometer upstream of Puerto Rico 132 bridge	*42.7
Rio Piedras Basin	
Atlantic Ocean and Bahia de San Juan: Municipio de San Juan:	
Entire shoreline	*2.7 *2.1
Atlantic Ocean: Municipio de Carolina:	
Entire shoreline	*2.4
Municipio de Guaynabo:	
Entire shoreline	*2.7 *1.8
Rio Yaquez Basin	
Atlantic Ocean: Municipio de Mayagüez:	
Entire shoreline	*3.0 *1.8
Yauca	
Caribbean Sea: Municipio de Yauca:	
Entire shoreline	*3.2
Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico.	
WEST VIRGINIA	
Matewan (Town), Mingo County (FEMA Docket No. 7259)	
Tug Fork:	
At downstream corporate limits	*693
Approximately 1,650 feet upstream of Norfolk and Western Railway	*699
Maps available for inspection at the Town of Matewan Development Center, Main Street, Matewan, West Virginia.	

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

Dated: January 4, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–527 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1804

Revision to the NASA FAR Supplement Coverage on Information to the Internal Revenue Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to provide guidance to NASA employees about furnishing to payment offices the taxpayer identification numbers of NASA contractors. The guidance will simplify NASA's efforts in meeting requirements for reporting payment information to the Internal Revenue Service.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Dave Beck, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

FAR 4.203 and subpart 4.9 have requirements for collecting. Taxpayer Identification Numbers (TIN's) and providing the TIN's to the payment office. Payment offices use the TIN's to meet requirements for reporting information to the IRS using IRS Form 1099. Payment offices can also use the TIN's to meet requirements under the Debt Collection Improvement Act of 1996 to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

Payment offices use IRS Form 1099 to report to the IRS payments for services. Payments for merchandise are exempt from the reporting requirement. However under this final rule, each NASA installation, that has its own employer identification number, may elect to report to the IRS the payments for merchandise. This optional reporting eliminates the need for the NASA installation to distinguish payments for merchandise from payments for services. This reporting does not change a taxpayer's obligation to record the payments, regardless of type, as ''gross receipts and sales'' on tax forms.

This final rule makes one other change. Section 1804.203 is added to permit NASA installations to have their own procedures for distributing TIN's from the contracting office to the payment office, in place of using the last page of the contract as stated in FAR 4.203.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule does not change the obligation of small entities to report income on tax forms. This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1804

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1804 is amended as follows:

1. The authority citation for 48 CFR Part 1804 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

1804.203 [Added]

2. Section 1804.203 is added to read as follows:

1804.203 Taxpayer identification information.

Instead of using the last page of the contract to provide the information listed in FAR 4.203, NASA installations may allow contracting officers to use a different distribution method, such as annotating the cover page of the payment office copy of the contract.

Subpart 1804.9—[Added]

3. Subpart 1804.9 is added to read as follows:

Subpart 1804.9—Taxpayer Identification Number Information

1804.904 Reporting payment information to the IRS.

Each NASA installation, that has its own employer identification number, may elect to report to the IRS payments under purchase orders and contracts for merchandise and other exempt bills.

[FR Doc. 99–438 Filed 1–8–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1871

Midrange Procurement Procedures

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapters 15 to 28, revised as of Oct. 1, 1998, 1871.401–6 is corrected by revising paragraph (a)(2) and adding paragraph (a)(3) as follows:

1871.401–6 Commercial items.

(a) * * *

(2) MidRange procedures shall also be used, to the extent applicable, for commercial item acquisitions accomplished under FAR subpart 13.6, Text Program for Certain Commercial Items.

(3) Contract type shall be in accordance with FAR 12.207.

* * * * *

[FR Doc. 99–55501 Filed 1–8–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AE26

Import of Polar Bear Trophies From Canada: Addition of Populations to the List of Areas Approved for Import

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule announces findings on the import of polar bears (*Ursus maritimus*) taken in sport hunts in the areas formerly known as Parry Channel-Baffin Bay and Queen Elizabeth Islands, Northwest Territories (NWT), Canada, under the Marine Mammal Protection Act (MMPA). The U.S. Fish and Wildlife Service summarizes the new research data used by Canada to redefine these areas into five populations: Queen Elizabeth Islands, Norwegian Bay, Kane Basin, Lancaster Sound, and Baffin Bay, and provides a summary of the Nunavut Land Claim and the new Flexible Quota Option. The Service finds that Lancaster Sound and Norwegian Bay meet the requirements of the MMPA and adds them to the list of approved populations in the regulations. The Service defers the decision on Queen Elizabeth Islands, Baffin Bay, and Kane Basin.

DATES: This rule is effective February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Office of Management Authority, telephone (703) 358–2093; fax (703) 358–2281.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1997, the Service published in the **Federal Register** (62 FR 7302) the final rule for the import of trophies of personal sport-hunted polar bears taken in Canada by U.S. hunters. The rule established the application requirements, permit procedures, issuance criteria, permit conditions, and issuance fee for such permits and made legal and scientific findings required by the MMPA. Before issuing a permit for the import of a polar bear trophy, we, the Service, must make a finding that the polar bear was legally taken by the applicant, and in consultation with the Marine Mammal Commission (MMC) and after opportunity for public comment, must make the findings listed in section 104(c)(5)(A) of the MMPA. We made these findings on an aggregate basis to be applicable for multiple harvest seasons as follows: (a) The Government of the Northwest Territories (GNWT) has a sport-hunting program that allows us to determine before import that each polar bear was legally taken; (b) the GNWT has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears (International Agreement); (c) the GNWT has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with CITES and would not likely contribute to illegal trade of bear parts. In addition, we found that the prohibition on the import of pregnant and nursing marine mammals in section 102(b) of the MMPA would be met under the application requirements, issuance criteria, and permit conditions in the regulation.

We provided information in the final rule to show that the following polar bear populations met the criteria specified in the MMPA: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville, M'Clintock Channel, and Western Hudson Bay. We deferred making a decision for other populations: Parry Channel-Baffin Bay, Queen Elizabeth Islands, Foxe Basin, Gulf of Boothia, Southern Hudson Bay, and Davis Strait. At the same time, we announced that upon receipt of substantial new scientific and management data, we would publish a proposal for public comment and consult with the MMC. Any population found to meet the criteria would be added to the list of approved populations in the regulation at § 18.30(i)(1).

When we proposed the polar bear rulemaking in July 1995 (60 FR 36382), the Department of Renewable Resources (DRR), GNWT, had begun an intensive population inventory of the Parry Channel-Baffin Bay area. We treated the Parry Channel-Baffin Bay area as a single population based on the best available scientific data at that time and current management practices by the GNWT. However, we recognized that forthcoming information would likely show the area to be composed of multiple populations. The final rule reflected our response to the numerous comments received on the treatment of the Parry Channel-Baffin Bay area as a single unit, rather than the new data resulting from Canada's ongoing research and management changes. To avoid further delay in completing the final rule, we chose to complete the rulemaking on the proposed rule and to publish the new data in a subsequent proposed rule. Thus, we deferred making a decision for the Parry Channel-Baffin Bay population in the final rule.

Canada provided information to the Service as their research in the Parry Channel-Baffin Bay areas progressed. In August 1995, Environment Canada stated in a letter to the Service that current status information on the Parry Channel and Baffin Bay areas ''would disqualify these populations,'' but new additional information could be available for review in early 1996. At the 1996 Polar Bear Technical Committee (PBTC) meeting the GNWT presented preliminary information that four polar bear populations were identified within an area that included the former Parry Channel-Baffin Bay and portions of the Queen Elizabeth Islands polar bear populations. Based on the preliminary data, the GNWT recommended boundary changes and renaming of the Parry Channel population as Lancaster Sound, boundary changes for the Baffin Bay population, and identification of the new Norwegian Bay and Kane Basin populations out of areas of Queen Elizabeth Islands. In July 1996, we received additional information on these areas and were advised that research and inventory studies in the areas were ongoing. In January 1997 additional information on these areas was obtained at the PBTC meeting, including information on new

population boundaries (Map 1) and population estimates, implementation of the Flexible Quota Option, and management changes as a result of further implementation of the Nunavut Land Claim.

Map 1. Boundaries of polar bear populations in Canada. Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), Queen Elizabeth Islands (QE), Norwegian Bay (NW), Kane Basin (KB), Lancaster Sound (LS), Baffin Bay (BB), Gulf of Boothia (GB), M'Clintock Channel (MC), Foxe Basin (FB), Davis Strait (DS), Western Hudson Bay (WH), and Southern Hudson Bay (SH).

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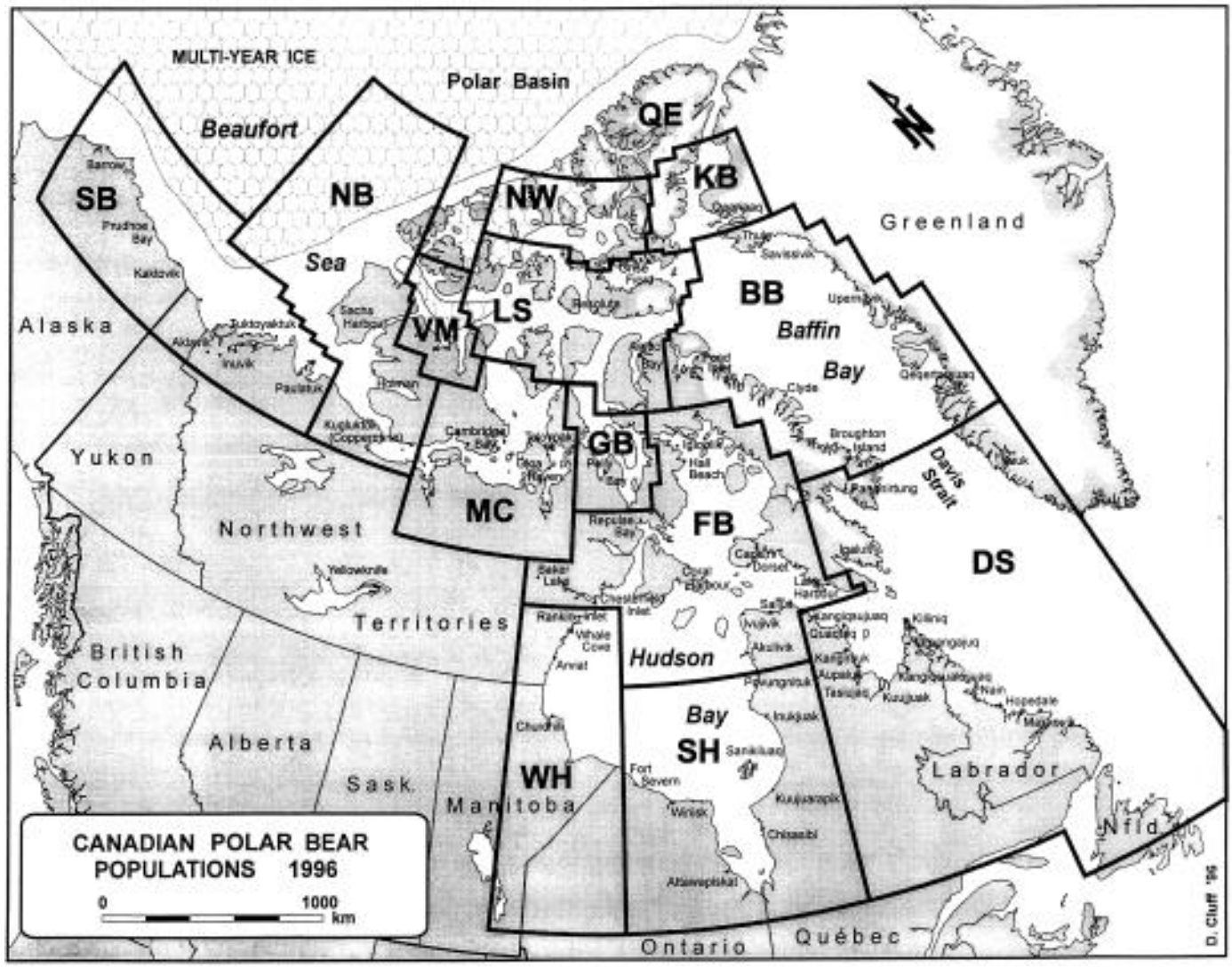

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On June 12, 1997, Congress amended the MMPA to ease the criteria that need to be met before a permit can be issued to import polar bear trophies taken before April 30, 1994 (i.e., pre-Amendment bears). See Public Law No. 105–18, § 5004, 111 Stat. 187–88 (1997). Under the new language, we can issue an import permit for such trophies after: (a) the applicant has provided proof to show that the polar bear was legally hunted in Canada and (b) we have published a notice of the application in the **Federal Register** for a 30-day public comment period and collected the permit issuance fee, which has been set by regulation at $1,000. These pre-Amendment trophies are subject to the inspection, clearance, and tagging procedures previously described in the final rule published February 18, 1997 (62 FR 7302). Based on the June 12, 1997, amendment, we are currently accepting and processing applications for permits to import polar bear trophies sport hunted prior to April 30, 1994, and will propose separately a revision of the regulations to implement the provisions of the amendment.

Scientific Findings and Summary of Information

Findings

We find that the Norwegian Bay and Lancaster Sound populations have sport-hunting programs based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level. We continue to defer making a finding for the Kane Basin and Baffin Bay populations pending the outcome of ongoing management actions between Canada and Greenland for the cooperative management of these shared populations. We also continue to defer

making a finding on the Queen Elizabeth Islands population that now contains land only in the far northern part of the Canadian Arctic Archipelago.

Summary of Information

We considered the new available information in reassessing whether the five populations now meet the required finding that there be a sport-hunting program based on scientifically sound quotas that ensure the maintenance of the affected population stock at a sustainable level. We considered the overall sport-hunting program for each population, including such factors as whether the sport-hunting program includes: (a) Reasonable measures to ensure the population is managed for sustainability (i.e., monitoring to identify problems, ways of correcting problems, etc.); (b) harvest quotas calculated and based on scientific principles; (c) a management agreement between the representatives of communities that share the population; and (d) compliance with quotas and other aspects of the program as agreed to in the management agreements or other international agreements.

An independent review of these populations was conducted by Dr. J. Ward Testa on behalf of the MMC and the results were reported to the Service in April 1997. The purpose of Dr. Testa's report was to review and evaluate Canada's polar bear management program, particularly as it related to the current status and sustainability of the polar bear populations for which we had deferred final decisions in the February 18, 1997, final rule. Specifically, the report addressed: (1) Whether Canada's polar bear conservation program is based upon sound principles of resource management; (2) whether the procedure being used by Canadian scientists to estimate sustainable polar bear harvests is conceptually sound and reflects current knowledge about polar bears; (3) whether the judgments concerning the number, discreteness, and status of putative polar bear populations in Canada are based upon the best available data and appropriate analyses; and (4) the likelihood that the data and procedures being used to assess population status and manage harvests will allow polar bear populations in Canada to grow or be maintained at current levels (Testa, 1997). Dr. Testa's conclusions are discussed below in context with our findings on the Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations.

A. Population Management

The rationale of the GNWT polar bear management program is that the human-caused kill (e.g., harvest, defense, or incidental kill) must remain within the sustainable yield, with the anticipation of slow growth for any population. This program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Federal Department of Environment Canada (Canadian Wildlife Service) maintains an active research program and is involved in management of populations that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in Co-Management Boards for most of Canada's polar bear populations. The PBTC and Federal/Provincial Polar Bear Administrative Committee (PBAC) meet annually to ensure a coordinated management process between these parties (Government of the Northwest Territories (GNWT) unpublished documents are on file with the Service). Study of the Parry Channel-Baffin Bay area highlights the cooperative and shared management that has come to characterize Canada's polar bear program. The GNWT conducted the study of this area in cooperation with the Hunters and Trappers Associations of several communities, Parks Canada, the University of Saskatchewan, and the Greenland Fisheries Institute. Participation by the Institute is of relevance since polar bears of the Baffin Bay and Kane Basin populations are shared with Greenland and harvested by residents of both countries. The results of these studies have been shared among participants, representatives of the Wildlife Management Boards, and Provincial and Federal polar bear managers at the annual PBTC and PBAC meetings as well as at the World Conservation Union (IUCN) Polar Bear Specialist Group (PBSG) meetings which bring together specialists from all countries that have polar bears (GNWT). Additional information on the GNWT management program for polar bear, including the use of inventory studies, population modeling, and peer review, is provided in the Service's February 18, 1997, final rule.

We noted in that final rule that Canada has established an effective management program for polar bear. Testa (1997) agreed in his report to the MMC with our appraisal of the GNWT polar bear management program. In particular, he noted that due thought has been given to the program and much has been accomplished, particularly with regard to broad scientific and political collaboration, community education about conservation principles, a high level of community involvement with management decisions, and implementation of adaptive, sustainable harvest quotas at the community level which resonate well with basic conservation principles.

B. Calculation of Harvest Quotas Based on Population Inventories

The DRR calculates harvest quotas based upon population boundaries delineated from inventories and mark-recapture studies (USFWS 1997; Bethke et al. 1996). Using satellite telemetry technology, researchers place collars on female polar bears and track the movements of the collared animals. The data collected is then used to define the population boundaries. Collars, either for satellite telemetry or radio tracking, cannot be reliably used for adult male polar bears since their necks are approximately the same size as the head and collars are easily lost. Polar bear researchers are still seeking alternative tracking technology suitable for male bears.

Inventory of the Parry Channel-Baffin Bay area and bordering islands of the Queen Elizabeth Islands area was begun in 1991 with the use of satellite collars. Additional collars were used in successive years through 1995. Considerable information on the mark-recapture studies of these areas, including the number of collars deployed, the areas in which they were used, the number of bears recaptured by age and sex class, and the methods of analyzing the data is provided in detail in the 1997 NWT submission to the PBTC (GNWT 1997).

Canadian polar bear managers have concluded, based on analysis of the data collected from this research, that there are five polar bear populations in these areas. These are the new Norwegian Bay and Kane Basin populations, the renamed Lancaster Sound population, the revised Queen Elizabeth Islands population, and the Baffin Bay population. Testa (1997) reported that the population boundaries are the result of extensive research with satellite and conventional telemetry and that the

reorganization of the Parry Channel-Baffin Bay and Queen Elizabeth Islands populations was conducted using procedures previously described by Bethke et al. (1996). Recognizing the inevitable uncertainties of science, Testa cautioned that the conclusions concerning polar bear stocks, their spatial boundaries, degree of separation, and sizes might not be completely correct. However, he asserted that the conclusions of Canadian polar bear researchers and managers are certainly based on the best available data and analyses.

The GNWT's use of data and management considerations to identify population boundaries is consistent with the definition of ''population stock'' as used in the MMPA (USFWS 1997). The GNWT recognizes that the boundaries of these stocks are partly determined by land mass, sea ice, and open water barriers that bar polar bear movement, and by management considerations. One such management consideration has led to a recent change to the Northwest Territory Big Game Hunting Regulations. In the past, the take of a bear was counted against the quota of the population from which it was removed. In recognition of the sometimes overlapping nature of populations which are not separated by some physical barrier, current regulations establish a 30-km zone on either side of a contiguous boundary between two polar bear populations. Practically speaking, what this means for hunters is that they can continue to track a polar bear across the population boundary and up to 30 km within the adjoining population. The take of that bear is then counted against the quota of the population from which the hunter's tag was provided. This regulation change reflects the description of population units as functional management units where immigration and emigration are negligible relative to the effects of harvest or defense kills (GNWT 1997).

A more recent investigative tool for defining population boundaries is the study of genetic variation among polar bears. Data obtained from such studies suggest that there is a genetic basis to the population boundaries (Paetkau et al. 1995). However, further work is needed to better understand how genetic variability should be interpreted and its relation to defining populations. Testa (1997) commented that genetic studies generally provide less resolution for management purposes than satellite telemetry.

The second phase of each population inventory is to estimate population numbers using mark-recapture techniques. The DRR mark-recapture studies are based on the following: (a) Marking of 15 to 30 percent of the bears in the population; (b) sampling the entire range of the population to determine the fraction that are marked and the fraction that are unmarked; and (c) aiming for a target 15 percent coefficient of variation on the population estimates (GNWT 1997). For small populations, such as Kane Basin and Norwegian Bay, the DRR recognizes that it can be difficult to obtain a large enough sample size needed for the estimates. The alternative for these small populations would be to sample in areas where bears are known to concentrate. However, this would introduce bias. Instead, priority is given to reducing bias by using the same protocol in small as well as large areas which requires sampling throughout the entire range of the population. Since there are absolute limits to the precision of information from small populations that no sampling protocol can overcome, a full risk assessment will be done on these populations. A new computer program for this purpose has been developed and was presented at the 1998 Biennial Conference on the Biology of Marine Mammals (GNWT 1998). This is an international forum attended by marine mammal researchers from many countries.

Three key characteristics of the GNWT calculation of sustainable harvest from the population estimates are: (a) Assumption of no density effects; (b) emphasis on conservation of female bears through hunting at a ratio of two males to one female; and (c) use of pooled best estimates for vital rates (e.g., rates of birth and death) for all Canadian polar bear populations with the exception of Viscount Melville (USFWS 1997). In his review and evaluation of the procedures used by the GNWT to estimate sustainable harvests, Testa expressed some reservations about the modeling aspects but went on to test the polar bear parameters provided by Taylor et al. (1987) with a general population model. He concluded that a 3 percent harvest of the female segment of the polar bear population is sustainable and probably conservative, and that the assumptions made for calculation of the sustainable harvest are reasonable. Additionally, he noted that these low rates of harvest, even if somewhat greater than 3 percent, are unlikely to result in irreversible reductions of bear numbers on the time scale of Canada's research and management actions. Harvests of 4 to 6 percent of the original population would take from 9 to 23 years to reduce the female population by 30 percent. In this context overharvest is possible, but reversible in the same or shorter time span by regulating or eliminating quotas, particularly if density dependent effects come into play (Testa 1997). Information on the allocation of the sustainable harvest as community quotas can be obtained from the Service's February 18, 1997, final rule.

The final year of mark-recapture work needed to estimate population numbers in the Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations was conducted in 1997. The last field season for the Norwegian Bay, Lancaster Sound, and Kane Basin populations was conducted in spring while the last Baffin Bay field season was completed in the fall during the open water season when polar bears are found onshore. Preliminary estimates for these populations have been calculated based on the data obtained by the GNWT through the Fall 1996 field season. Some data analysis had yet to be completed as of the 1998 Polar Bear Technical Committee Meeting but the final analysis was not anticipated to be qualitatively different than the preliminary analysis (GNWT 1998).

Table 1 provides information based on the GNWT reporting format for each of these populations including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest. Based on this information the status is expressed as increasing, stable or decreasing represented by the symbols ''+'', ''0'', and ''−''. The symbol ''0*'' refers to the recent implementation of the Flexible Quota Option in the management program as described below.

Table 1. Draft status for the Norwegian Bay (NW), Lancaster Sound (LS), Kane Basin (KB), Baffin Bay (BB), and Queen Elizabeth Islands (QE) populations. Average kill and harvest figures over several seasons, and for the 1995/96 and 1996/97 seasons.

Pop.	Pop. est.	Reliability	5-Year average 91/92–95/96		3-Year average 93/94–95/96		Season 95/96		Season 96/97		Pop.[1, 2] Trend
			Kill(% ♀)	Sustainable harvest	Kill(% ♀)	Sustainable harvest	Kill(% ♀)	Sustainable harvest	Kill(% ♀)	Sustainable harvest	
NW	100	Fair	4.0(30.0)	4.5	4.7(42.9)	3.5	7(57.1)	2.6	2(0.0)	4.5	0/0/0*/+
LS	1700	Good	81.2(24.9)	76.5	81.7(26.0)	76.5	80(26.9)	76.5	77(22.1)	76.5	0*/0*/0*/0
KB	200	Fair	6.2(37.1)	8.1	6.3(38.1)	7.9	6(35.0)	8.6	5(60.0)	5.0	0/0/0/0*
BB	2200	Good	122.2(35.4)	93.2	120.3(35.0)	94.3	117(34.2)	96.5	57(35.7)	92.4	–/–/–/0
QE	200	None	0.0(—)	0.0	0.0(—)	0.0	0(—)	0.0	0(—)	0.0	0/0/0/0

[1]—overharvest.
+underharvest.
0 no change, a difference of 3 or less between the kill and the sustainable harvest.
0* population stable because of management changes.
[2]—Population Trend expressed for 5 yr. avg./3 yr. avg./95–96 season/96–97 season.

The Service considers the use of qualitative terms to report the reliability of population estimates within the present context to be valid since they were determined through research using scientific methodology and are a conservative approach (USFWS 1997). However, we also recognize that the use of quantitative references, such as the standard error, are more acceptable. The GNWT anticipates that qualitative terms for the Lancaster Sound, Norwegian Bay, Kane Basin, and Baffin Bay populations will be replaced with quantitative terms as final analysis of the latest research data is completed (GNWT).

C. Management Agreements and the Nunavut Land Claim

Polar bear management in Canada is a shared responsibility involving Federal, Territorial, Provincial, and land claim participants. Coordination of these parties is the result, in part, of PBTC and PBAC meetings as well as management agreements between the resource users and the GNWT. These management agreements are an intrinsic part of cooperative polar bear management in Canada. In § 18.30(i)(1)(iii) we recognized management agreements as an essential part of making the finding that there is a sport-hunting program to ensure the sustainability of the affected polar bear population.

The settlement of native land claims in Canada served as an impetus for the development of the management agreements. The Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations, among others, fall within the Nunavut Land Claim signed in 1993. Both this claim and the Inuvialuit Land Claim signed in 1984 establish co-management boards for cooperative management of wildlife resources, including polar bear (GNWT). The respective roles of the GNWT and the Nunavut Wildlife Management Board and the Inuvialuit Wildlife Management Advisory Council are defined in law. The wildlife management advisory boards are regarded as the main instrument of wildlife management action in the NWT, although the Minister of the Department of Renewable Resources is the ultimate management authority (GNWT). The current approach to polar bear management begins with community meetings and concludes with Population Management Agreements that are signed by the communities that share a population and the Minister of Renewable Resources, reviewed by the Native Land Claim Boards, and finally transmitted to the Minister of the Department of Renewable Resources as recommendations for regulation changes to implement the agreements (GNWT).

One effect of the Nunavut Land Claim is the division in 1999 of the NWT into the Nunavut Territory and some presently unnamed western territory. The transition for this change has already begun with restructuring of departments including amalgamation of the DRR and others into the Department of Resources, Wildlife and Economic Development (M. Taylor, personal communication). The NWT polar bear project has been transferred from Yellowknife, NWT, to Iqaluit, the future capital of the Nunavut Territory. We view these changes as a continuation of a process begun with settlement of the Nunavut Land Claim in 1993. Management actions taken to date, including development of the management agreements, have been with an eye toward establishment of the Nunavut Territory and are a further example of Canada's commitment to a responsive management program for polar bear.

The success of the Canadian management agreements and others, such as the Inupiat-Inuvialuit Agreement for the Southern Beaufort Sea polar bear population, has led to the acceptance of such agreements as an important tool for interjurisdictional polar bear management. At the 1997 IUCN meeting for polar bear, the PBSG reiterated the need for cooperative management of shared populations both as a benefit to polar bears and as a requirement of the International Agreement. Specifically, the contribution of management agreements was recognized and the need for additional agreements was called for in a new resolution to the International Agreement that concluded that ''the development of sound conservation practices for shared populations requires systematic cooperation, including use of jointly collected research and management information to develop cooperative management agreements'' (PBSG 1997).

The Canadian Government is actively pursuing development of a management agreement for polar bear populations shared between Canada and Greenland. These shared populations include the Kane Basin, Baffin Bay, and Davis Strait polar bear populations. A meeting was held in January 1997 to identify management needs and to discuss the potential development of a management agreement for these shared populations. The following areas were identified as necessary elements of a co-management agreement: (a) agreement on the boundaries, population, and sustained yield of the three populations; (b) acceptable division of the sustained yield; (c) harvest monitoring; (d) a management system to ensure the sustained yield is not exceeded; and (e) agreement on other harvest practices, such as family groups, protection of dens, etc.

Representatives of Greenland have clarified that, unlike the Inuvialuit-Inupiat agreement for the Southern Beaufort Sea population, any management agreement for populations shared with that country would need to be government to government rather than user group to user group. At this point it is uncertain how Canada will be represented given the complex sharing of management responsibilities for polar bear within Canada. A committee was

formed to examine the options for Canadian representation. The options are expected to be discussed at future meetings on development of management agreements between Canada and Greenland (GNWT).

D. Compliance With Quotas and the Sport-Hunting Program

The community quotas are based on harvest of polar bears at a ratio of two males:one female (USFWS 1997). While this allows for the harvest to be 50 percent higher than if polar bears were harvested at a 1:1 ratio, implementation of the sex selective harvest has posed problems. For some communities where the sex ratio was set as a target of management agreements, there was ineffective enforcement when the harvest of females exceeded the target in some years. For those communities where the sex-selective harvest was implemented through regulation, difficulty distinguishing between male and female polar bears led to mistakes and inconsistent law enforcement action for those mistakes. To respond to these problems, the Flexible Quota Option was developed. All communities within the four populations of Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay have agreed to follow the Flexible Quota Option . This change has been incorporated into the respective management agreements and, subsequently, into the regulations which implement those agreements.

The premise behind the Flexible Quota Option is that it will allow for mistakes in sex identification and for community preferences in sex-selective harvesting while keeping the harvest within sustainable yield. There are two parts to this system. The first part is a harvest tracking system that monitors the number of males and females killed in the past 5 years. If the sustained yield was not taken in any one of the past 5 years, then the difference between the sustained yield and the actual kill is counted as a positive credit. These accrued credits can then be used to compensate for an overharvest in a future harvest season. If no credits are available (i.e., the full sustained yield was taken in each of the past seasons or any available credits have already been used), then an overharvest can be mitigated by quota reductions in future years. Once the overharvest has been corrected by a quota reduction, the quota returns to its original level. Since community quotas are a shared allocation of the overall population quota, a community without positive credits can receive credits from one of the other communities hunting from that same polar bear population. If there are no credits available or if a community chooses not to provide credits to another, then the overharvest is mitigated by a quota reduction to the community which experienced the overharvest.

The second part of the Flexible Quota Option is the calculation of the quota based on sustainable sex-selective harvesting of one female bear for every two males. The GNWT summarizes the system as follows. The number of quota tags allocated to a community depends on the community's allocation of the sustainable yield of female bears (F) from any one population as established through a management agreement, the number of female bears killed in the previous year (K_{t-1}), and the proportion of female bears in the previous year's harvest (P_{t-1}). The quota for the current year (Q_t) is then calculated as:

$Q_t = (2F-K_{t-1})/P_{t-1}$

The value of $(2F-K_{t-1})$ cannot exceed F, and the value of P_{t-1} cannot be less than 0.33. If the value of $(2F-K_{t-1})$ is less than zero, the quota is zero and the subsequent year's quota is calculated by designating K_t as the value of $-(2F-K_{t-1})$ (GNWT 1996). Testa (1997) concluded that this was simply a way to average the quota over two years when a village inadvertently exceeds its quota in a given year. In this way the average take of female bears cannot exceed the sustainable rate.

Because of the emphasis on conservation of female bears, the sex ratio of the overharvest must be taken into consideration when a quota reduction is necessary. As a result, the reduction is handled differently for male versus female bears. Reductions to the quota as a result of an overharvest of males occur only when the maximum number of females has also been taken or exceeded. The correction for such an overharvest is one male for each male overharvested. A correction is not made for an overharvest of male bears if the number of females taken is less than their sustained yield. The rationale for this decision is that although males were overharvested, females were not. As a result, those females not harvested will reproduce and compensate for the additional males removed from the population. In contrast, when an overharvest of females has occurred, the quota reduction is not simply one quota tag for each female overharvested. Instead, the sex ratio of the harvest must be considered in determining the necessary quota reduction for the following year or subsequent years, if necessary (GNWT 1996).

The management agreements identify the steps to be taken to implement the flexible quota system. The DRR reviews the harvest data of the previous season and identifies any overharvest. Then the community HTO's, Regional Wildlife Boards, Wildlife Officers, and Regional Managers develop sustainable alternatives to quota reductions, if possible. These could include use of credits from that community that experienced the overharvest or the borrowing of credits from another community that hunts from the same polar bear population. By July 1 of each year, the DRR must report the harvest data and quota recommendations to the Nunavut Wildlife Management Board (NWMB). The NWMB can accept these recommendations or vary them depending on the input of the Board and consultation with the communities. They submit final recommendations to the Department Minister who must make a final decision, taking into consideration the DRR harvest report and NWMB recommendations, by August 1 (GNWT).

The 1996/97 polar bear harvest season was the first in which the communities used the Flexible Quota Option. In the first year of implementation, all populations were hunted within sustained yield for both males and females. Some corrections were made for communities that were unable to meet their harvest targets. These corrections included use of credits from another community and quota reductions. In developing the Flexible Quota Option, the GNWT believed that it would be able to accommodate differences in hunting preferences, differences in hunting opportunities as a result of weather effects, and would keep each population's harvest within sustainable yield (GNWT 1996). Although this system of regulating and monitoring the quota is considered somewhat less conservative than the previous method, in the first year of its use it has shown itself to be more effective at achieving a sustainable harvest for all populations.

As referred to above, there are some less conservative elements to the Flexible Quota Option. The first element is the manner in which the DRR assigned the initial credit balance. All communities that agreed to use the new system entered it with a zero balance of negative credits but were allowed to retain their positive credits. These positive credits can be used to offset future overharvests. The DRR recognizes the inconsistency of this approach but believes that it will not have a long term negative effect on the populations and that such an approach was necessary to win support for the system. The second element is the Flexible Quota Option

feature that allows unused quota tags to essentially be ''rolled over'' to the following year as a positive credit. In the past, unused quota tags were not retained into the following year. We recognize, as did Testa (1997), that this change could theoretically slow the growth of Canadian polar bear populations. However, it should be recalled that under the previous system the sex ratio of the harvest was set as a target for some populations, including the former Parry Channel-Baffin Bay, rather than into regulation (PBSG 1995). The flexible quota system does not provide this option. Sex ratios are set into regulations for all communities using the flexible quota system, thus providing an additional element to conserve female polar bears that was not present in the previous system. Given the results to date, we believe that the flexible quota system is a reasonable alternative for those communities that have had difficulty consistently hunting at a 2:1 ratio. In commenting upon the system, Testa (1997) recognized the experimental nature of the Flexible Quota Option, but concluded that it was conceptually sound and needed a chance to have its wrinkles worked out.

Status of Populations the Service Approves

The Service approves the Norwegian Bay and Lancaster Sound populations as meeting the required findings of section 104(c)(5)(A)(ii) of the MMPA based on currently available information and adds them to the list of approved populations in § 18.30(i).

Norwegian Bay (NW)

The preliminary population estimate for this new area is 100 with fair reliability based on the analysis of data collected from the inventory and mark-recapture studies. This population was identified as being separate from the Queen Elizabeth Islands population previously described in the Service's February 18, 1997, final rule. A harvest quota of four bears has been calculated for this population. The quota is allocated to the community of Grise Fiord.

Table 1 provides information on the 5- and 3-year average of the harvest in comparison to the sustainable level. These figures were calculated retrospectively for Norwegian Bay using harvest data from Grise Fiord once a new population estimate was obtained. As is shown in the table, the harvest conducted prior to identification of the Norwegian Bay population occurred in excess of the sustainable harvest level. The community residents of Grise Fiord have agreed to the terms of a revised management agreement which includes use of the Flexible Quota Option to ensure that future harvests are sustainable and all family groups are protected. No females were taken in the 1996/97 season during the first year of the Flexible Quota Option, and the overall harvest was within sustained yield.

Lancaster Sound (LS)

The GNWT reports a preliminary population estimate of 1,700 with good reliability. Based on the new population estimate, a harvest quota of 76.5 has been calculated. Three communities, Grise Fiord, Resolute, and Arctic Bay, harvest bears from the Lancaster Sound area. All family groups are protected in this population. The Service pointed out in the February 18, 1997, final rule that the harvest of polar bears from the combined Parry Channel-Baffin Bay area had exceeded the quota by more than 70 percent over the 5- and 3-year average of harvest results from 1991 through 1996. This apparent lack of compliance was of concern to the Service and was one of the reasons for deferring a decision on the area, pending the results of ongoing research and management activities. The GNWT has now recalculated previous harvests in the Lancaster Sound population based on the separation of the data for the former Parry Channel-Baffin Bay area and the new population estimates for Lancaster Sound and Baffin Bay. As shown in Table 1, based on the most recent data, Lancaster Sound did experience some overharvest over a 5- and 3-year average of seasons from 1991 through 1996. However, female bears were conserved in that less than 30 percent of the harvest was composed of females. This accounts for the lack of change in the sustainable harvest over the same time period. These data show that the Lancaster Sound population was not overharvested and is being managed on a sustainable basis.

As mentioned above, we consider compliance with quotas as an essential part of any management program. The communities have signed a new management agreement which includes the use of the Flexible Quota Option to help ensure compliance with quotas and correct for overharvests if they do occur in the future.

As described above, under the Flexible Quota Option an overharvest of male bears results in a quota reduction only when the harvest of female bears has met or exceeded the maximum allowed. The 5-year harvest history for the Flexible Quota Option shows the Lancaster Sound area had 30 credits for female bears. In contrast, the harvest history shows an accumulated debit of 38.5 male bears for the population. It is unclear whether the predominance of males in the harvest was due to hunter preference or to a greater availability of male bears in this area. This emphasis on harvesting male bears from this population by one community was relieved, however, to a limited extent by the predominance of harvesting females by another community.

Status for Populations for which Scientific and Management Data are Not Presently Available for Making a Final Decision

After reviewing the best available scientific and management data on the populations addressed below, the Service is not prepared to make a final decision on whether populations of Kane Basin, Baffin Bay, or Queen Elizabeth Islands satisfy the statutory criteria of section 104(c)(5)(A) of the MMPA. As future scientific and management data become available on these populations, we will evaluate such data to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(1).

The NWT shares the Kane Basin, Baffin Bay, and Davis Strait populations with Greenland. Greenland does not have an agreement with NWT or communities as to how they will manage their portion of the populations. The management of polar bears in Greenland rests with the Greenland Home Rule Government. There is no limit on the number of polar bears taken. Although females with cubs-of-the-year are protected, older family groups are harvested. In 1993 Greenland started to systematically collect harvest data. In 1994, a harvest questionnaire was developed for all species, including polar bears. Greenland has experienced difficulties in obtaining complete and accurate harvest records, but the collection of data is expected to improve as the harvest reporting system becomes better known (GNWT).

As mentioned above, Greenland and the GNWT have conducted cooperative population inventory studies for the past 4 years. The brief summary of the January 26, 1997, meeting for the co-management of polar bear stocks shared between Greenland and Canada reported that the status of polar bears in the shared populations is disturbing. ''It appears that the Davis Strait and Baffin Bay populations are being depleted by over-harvesting. Additionally, Grise Fiord has identified a quota for the Canadian portion of Kane Basin which, if taken, will cause this population to decline as well'' (GNWT).

The Queen Elizabeth Islands population now contains land only in the far northern part of the Canadian Arctic Archipelago. No hunting is allowed in this area and the population size is unknown. Canada's plans for this area are unclear at this time.

Kane Basin (KB)

Like Norwegian Bay this new population was identified as occupying an area formerly considered to be part of the Queen Elizabeth Islands population. Unlike the Norwegian Bay population, the Kane Basin population is shared with Greenland. The population estimate for this area is 200. Management agreements for the NWT portion of Kane Basin and Baffin Bay populations are in place that include protection of all family groups and use of the Flexible Quota Option. During the 1996/97 harvest season more than 50 percent of the quota was taken as female bears. As a result, under the Flexible Quota Option the quota for this population will be reduced to one for the 1997/98 harvest season. As long as the 1997/98 quota of one bear is not exceeded and no females are taken, the overharvest of females in the 1996/97 season will have been compensated for and the quota will return to five (M. Taylor, personal communication).

The Kane Basin population is currently considered stable but a single NWT community, Grise Fiord, has a quota for harvesting from the Kane Basin population. If this occurs, the population is expected to decline since Greenland hunters also harvest from this population. Discussions of a co-management agreement between Canada and Greenland are expected to be conducted concurrently for the Kane Basin, Baffin Bay, and Davis Strait populations.

Baffin Bay (BB)

The preliminary population estimate for this area is 2,200. The combined Parry Channel-Baffin Bay population estimate of 2,470 reported in the final rule was derived from the 2,000 estimated for Parry Channel (now Lancaster Sound) and 470 from northeastern Baffin Bay. In spring the polar bears in the Baffin Bay area are distributed throughout Baffin Bay and much of the population is unavailable for mark-recapture, leading to underestimates of the population size. For this reason the mark-recapture work of the most recent inventory study has been conducted in the fall, open water season when Baffin Bay polar bears are on shore in Canada (GNWT 1997). Fall 1997 is expected to be the last field season required to complete the inventory study. The harvest data for this population is presented in Table 1 but should be considered preliminary pending harvest information from Greenland. The communities of Broughton Island, Clyde River, and Pond Inlet that harvest from this population have agreed to a revised management agreement which includes protection of all family groups and use of the Flexible Quota Option.

As explained above for the Lancaster Sound population, the GNWT has re-examined the population status of past years based on the new population estimate. Overharvesting is a problem for this shared population. Data from Canadian hunts conducted in the 1996/97 harvest season show a total kill substantially below the sustainable harvest level, and a harvest sex ratio of nearly 2:1. However, as previously described, there is currently no management agreement between Canada and Greenland for this shared population and there are concerns that the population may be declining.

Queen Elizabeth Islands (QE)

Recent research data led the GNWT to redefine the boundaries of this population. The area was divided into three populations: Kane Basin, Norwegian Bay, and Queen Elizabeth Islands. The revised Queen Elizabeth Islands population is comprised now of land only in the far northern part of the Canadian Arctic Archipelago. The population size is unknown but it is believed that there are few polar bears in this remote area. No hunting is allowed in the area.

Background

On February 2, 1998, the Service published a proposed rule in the **Federal Register** (63 FR 5340) to announce findings on the import of polar bears taken in sport hunts in the areas formerly known as Parry Channel-Baffin Bay and Queen Elizabeth Islands, Northwest Territories, Canada. Specifically, we reviewed new information and considered whether there was now a sport-hunting program in place that was based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level. This finding was previously deferred in the Service's February 18, 1997, final rule pending the outcome of ongoing management and research activities. The Service received 14 comments, including 5 form letters, comments from 7 individuals, and 1 humane organization. Comments were also provided by the MMC as part of the consultative process required by the MMPA.

Summary of Comments and Information Received; General Comments

Issue 1: Several respondents requested that the Service approve the Baffin Bay and Kane Basin populations now but postpone the issuance of import permits until there is a management agreement in place between Canada and Greenland for these shared populations.

Response: The Service believes management agreements need to be in place before we approve a population since they are an essential part of co-management of polar bear populations between the resource users and government wildlife managers. Although Canadian authorities are pursuing development of a joint management agreement with Greenland, the content, format, and parties to such an agreement have yet to be decided.

Issue 2: The MMC thought the Service should indicate how frequently hunters follow and take bears across population boundaries under the 30-km rule and re-examine the rationale for how population boundaries have been set if such movements are not rare.

Response: The Service does not agree. Harvest data and research, including marking and tagging data collected over several years, have shown that Canada's polar bear populations are relatively closed with a clear core area and minimal overlap. The use of the 30-km rule assists Canada in managing bears in areas where the likelihood of overlap is greatest. Canada monitors populations, analyzes the data on the movement of bears, and anticipates boundaries may change as new information on polar bear movements becomes available (USFWS 1997) .

Issue 3: One commenter stated that the MMPA criteria require the findings to be made on the whole of Canada rather than on a population-by-population basis and that acceptance of qualitative terms to define the population estimates is unacceptable.

Response: These issues were discussed at length in the Service's February 18, 1997, final rule. We believe these issues were addressed in the development of the regulations and encourage those interested in these issues to read the previous final rule.

Comments on the Flexible Quota Option

Issue 1: The MMC recommended that the Service closely track the implementation of the new Flexible Quota Option to ensure that it works as expected and that the quotas continue to meet the statutory requirements.

Response: The Service continues to review new information on Canada's

polar bear management program, including implementation of the Flexible Quota Option. We participate in the PBTC meetings where Canada annually reviews its management program for polar bears, which provides us with up-to-date information. The regulations allow the Service to scientifically review the impact of permits issued on polar bear populations to ensure there is no significant adverse impact on the sustainability of the Canadian populations. The initial review is to occur by March 20, 1999.

Issue 2: One commenter expressed concern over the Flexible Quota Option, stating that it does not comply with the MMPA criteria, is not precautionary, maximizes opportunities to hunt, and was politically rather than biologically motivated.

Response: In making its findings under the MMPA, the Service considered whether Canada's polar bear management program will ensure the sustainability of the affected population stock. The Flexible Quota Option was developed in response to problems some communities experienced with the previous system. It allows for hunter preference in harvesting for a particular sex, and for mistakes in sex identification while still providing mechanisms for enforcement of the quotas and corrections to the quotas if overharvests occur. The Flexible Quota Option does not change how polar bear tags are distributed to communities. It does alleviate the need for having two separate types of tags (i.e., male only and either sex) that were used in the two-tag system. Hunters must still have a tag for each bear taken, and tags are distributed to communities based on the community quota as previously described in the Service's February 18, 1997, final rule (62 FR 7302).

Repeated harvests in excess of the quota appeared to be a problem for communities hunting from the Lancaster Sound and Baffin Bay populations under the previous system. In contrast, following its first year of use, not one population harvested under the Flexible Quota Option experienced an overharvest. Although we acknowledged two aspects of the system were less conservative than the previous system (see section D), the system can be viewed as being more conservative for some populations (e.g., Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay). Under the previous system, the sex ratio of the harvest was a target goal but was not set in regulation. This presented a problem when the overall harvest was within quota but the take of female bears exceeded the target ratio. The Flexible Quota Option requires harvests to be within quota, and provides a means to ensure that the take of female bears remains within sustained yield. Communities which take too many females have to either take a quota reduction for the following season or compensate by using an accrued credit from a previous years underharvest of females. As a result, the ability to enforce harvest quotas and the sex ratio of the harvest, if needed, has been strengthened by the adoption of the Flexible Quota Option. We, along with other experts, recognize that this system is based on sound wildlife management practices.

Issue 3: One commenter claimed that under the Flexible Quota Option males could be harvested to the last bear without penalty.

Response: The Service disagrees. Under the Flexible Quota Option, all polar bear harvests and other human-caused kills (i.e., accidental deaths as the result of scientific research) must be within quota. There are penalties for taking bears in excess of the quota. However, unlike the harvest of female bears, hunters are not penalized for taking male bears in excess of a 2:1 sex ratio provided the overall harvest is still within quota. The reason for this is that for each male taken, a female bear is not taken and thus females bears are further conserved. The belief is that the take of male bears is offset by the conservation of female bears who will in turn produce male offspring. In addition, Canada's management program for polar bears protects all bears in family groups, including males up to 2 years old. The program also includes ways to monitor changes in the population age and sex structure (i.e., sample and data collection of the harvest, scientific research, and observational data from hunters and residents). Canadian wildlife managers and resource users have procedures to address population changes accordingly and have used them to seek solutions to management concerns in the past (e.g., for the Viscount Melville population).

Issue 4: One commenter disagreed with the Service's statement that the Flexible Quota Option had already shown itself to be an effective option, and argued that the Service could not judge whether the system is effective for a species, such as polar bear, which is long-lived and difficult to study.

Response: The Service agrees that rapid assessment of the long term effectiveness of a quota system is not possible for polar bear. The Service's comment was meant to recognize the new Flexible Quota Option as an effective alternative to the previous system, not assess the effectiveness of the system long term. We have changed the text in this final rule to better reflect this.

Issue 5: The same commenter remarked that the Service's discussion of J. Ward Testa's report on the Flexible Quota Option ignored the caveats in the report, and criticized the Service for interpreting Testa's remarks as giving ''blanket approval'' to the Flexible Quota Option . The commenter also recommended that the Service postpone approval of Lancaster Sound and any population using the Flexible Quota Option until all the ''wrinkles'' are worked out.

Response: The Service believes Testa's report was accurately summarized in the proposed rule, but has added text to the final rule to clarify our summary. Although Testa recognized the experimental nature of the Flexible Quota Option, he concluded that it was conceptually sound and needed a chance to have its wrinkles worked out. The Service agrees with this assessment, believes that the system has a solid theoretical and biological basis—while being flexible and pragmatic—and therefore, approved populations that use the Flexible Quota Option.

Comments Specific to Lancaster Sound and Norwegian Bay

Issue 1: The MMC noted that data in Table 1 appears to indicate that the actual harvest levels in Lancaster Sound and Norwegian Bay may have exceeded the sustainable harvest in previous years. They believe the Service should not approve these populations retroactively unless the Service has determined that Canada's management program was based on scientifically sound quotas ensuring the maintenance of the affected population at a sustainable level at the time the bear was taken.

Response: As discussed by the Service in the February 18, 1997, final rule, the MMPA specifically uses the present tense in the findings—''Canada has a monitored and enforced sport-hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears.'' There is no other reference in the MMPA amendment that provides for the findings for trophies taken in the past to be based on the program at the time of taking. The Service has already indicated that bears may be imported from previously deferred populations once that population is approved as meeting all of the MMPA criteria for import.

Issue 2: The MMC recommended that the Service explain how we concluded

that past take levels have been sustainable and why we believe it is not indicative of possible management problems at least in past years.

Response: The Service did not state, nor does it believe, that harvests in excess of the quotas may not be indicative of a management problem. It was for this reason, in part, that the Service did not approve the former Parry Channel (now Lancaster Sound) and Baffin Bay populations in the February 18, 1997, rulemaking. As discussed in the previous response, the Service is making a finding on the current management program in accordance with the MMPA amendment, not on whether the past take levels have been sustainable.

Issue 3: One commenter criticized the Service for not providing convincing biological information in the rule to support the creation of the Lancaster Sound population.

Response: The Service's role is to review Canada's polar bear management program to make the findings outlined in the MMPA. Under Canada's current management program, Lancaster Sound and Norwegian Bay are identified as separate polar bear populations. We summarized information on the methods used by Canada to determine and review populations in the February 18, 1997, final rule and earlier in this rule, citing published and unpublished reports and papers. Detailed information, including the number of bears marked, the sex and age-class of marked bears, and descriptions of the methods used to analyze the data can be found in these references, which are available from the Service.

Issue 4: The same commenter criticized the Service's proposed decision to approve Lancaster Sound in that it ''appears highly suspect because management stats indicate it has been sport-hunted heavily, boundary changes have eliminated any overlap with Greenland, and the dramatic over-harvest has been eliminated for Lancaster Sound by redrawing the boundaries''.

Response: Canada has recognized the Lancaster Sound and Baffin Bay populations as separate for many years with the boundary of Lancaster Sound far removed from Greenland. The Service treated these populations as a single unit for the purpose of the Service's February 18, 1997, final rule because the exact boundary separating the two populations had not been defined pending ongoing research results. The results of the research (GNWT 1997) provided substantial new information which allowed Canada to delineate the new boundary and the Service to approve Lancaster Sound population for the import of sport-hunted trophies under the MMPA.

Comments on the RISKMAN Program

Issue 1: The MMC recommended that the Service conduct its own evaluation of Canada's new risk assessment computer program—RISKMAN—and advise the MMC of the results.

Response: The RISKMAN program is one aspect of the Northwest Territories Management Program for polar bears. Under the MMPA, the Service is to determine whether Canada has an overall polar bear management program based on scientifically sound quotas to ensure the maintenance of affected population stock at a sustainable level. We believe the development of this program demonstrates Canada's pursuit of a management program based on the best available scientific data, and that Canada's presentation of this program in an international forum optimizes the opportunity for critical review and input from the scientific community. Therefore, we do not believe that an independent evaluation of RISKMAN by the Service is warranted.

Issue 2: One commenter stated that the Service must re-evaluate its decision to approve Lancaster Sound since the Canadian Wildlife Service (CWS) indicated during a presentation of the RISKMAN program that data must be more precise and more frequently collected to maintain high confidence in current harvest levels.

Response: The Service disagrees. RISKMAN models the effects of harvest and other removals on the subject population. It is an individual based model and operates most effectively with extensive, detailed population and harvest data. RISKMAN is a valuable tool for managers to help monitor the consequences of removals upon the population and to refocus management efforts, if needed. Its intended use is to assist Canada in improving its management programs for polar bears and other bear species. The conclusions made by the CWS based on RISKMAN do not indicate that the current management program does not meet the requirements of the MMPA.

Required Determinations

This final rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant economic effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions. The proposal will affect a relatively small number of U.S. hunters who have hunted, or intend to hunt, polar bear in Canada. Allowing the import of legally taken sport trophies, while maintaining the restriction on the sale of trophies and related products, will provide direct benefits to individual sport hunters and a probable small beneficial effect for U.S. outfitters and transportation services as U.S. hunters travel to Canada. If each year an estimated 50 U.S. citizens hunted a polar bear in Canada at an approximate cost of $21,000, then $1,050,000 would be expected to be spent, mostly in Canada. It is expected that the majority of taxidermy services will be provided in Canada. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests. The $1000.00 fee collected from each U.S. hunter upon issuance of a trophy import permit is used for the management of the shared U.S./Russian Federation polar bear population as required by the MMPA, and does not affect U.S. business interests.

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and will not negatively affect the economy, consumer costs, or U.S.-based enterprises. The groups most affected by this rule are a relatively small number of U.S. sport hunters who choose to hunt polar bear in Canada, and a comparatively small number of U.S. outfitters, taxidermists, and personnel who provide transportation services for travel from the United States to Canada.

The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Service has determined that the rule has no potential takings of private property implications as defined in Executive Order 12630.

The rule will not have substantial direct effects on the States, in their relationship with the Federal Government or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the Service has determined that the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment.

In accordance with Executive Order 12988, the Department has determined

that the rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

The Office of Management and Budget has approved the collection of information contained in this final rule as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned clearance number 1018–0093 which expires on February 28, 2001. The Service will collect information through the use of the Service's form 3–200–45. The likely respondents will be sport hunters who wish to import trophies of polar bears taken while hunting in Canada. The Service will use the information to review permit applications and make decisions, according to criteria established in statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain a permit. A single response is required to obtain a benefit. The Service estimates the public reporting burden for this collection of information to vary from 15 minutes to 1.5 hours per response, with an average of 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated number of likely respondents is less than 150, yielding a total annual reporting burden of 75 hours or less.

The Service prepared an Environmental Assessment (EA) on the final rule published in the **Federal Register** (62 FR 7302) on February 18, 1997, in accordance with the National Environmental Policy Act (NEPA) and concluded in a Finding of No Significant Impact (FONSI) based on a review and evaluation of the information contained within the EA that there would be no significant impact on the human environment as a result of this regulatory action and that the preparation of an environmental impact statement on this action is not required by Section 102(2) of NEPA or its implementing regulations. Based on the review of current information and comments received on the February 2, 1998, proposed rule, the Service has determined that this EA is still current. The FONSI has been revised to reflect the regulatory actions taken by the Service to approve the Lancaster Sound and Norwegian Bay polar bear populations for issuance of permits to import personal sport-hunted polar bear trophies. The issuance of individual marine mammal permits is categorically excluded under 516 DM6, Appendix 1.

The Service has evaluated possible effects on Federally recognized Tribes and determined that there will be no adverse effects to any Tribe.

References Cited

Bethke, R., M. Taylor, F. Messier, and S.E. Amstrup. 1996. Population delineation of polar bears using satellite collar data. Ecol. Appl. 6:311–317.

GNWT, Department of Renewable Resources. 1996. Report prepared for the Polar Bear Technical Committee Meet., no. 25, 12 pp.

GNWT, Department of Resources, Wildlife, and Economic Development. 1997. Report prepared for the Polar Bear Technical Meet., no. 26, 11 pp.

GNWT, Department of Resources, Wildlife, and Economic Development. 1998. Report prepared for the Polar Bear Technical Meet., no. 27, 42 pp.

Paetkau, D., W. Calvert, I. Stirling, and C. Strobeck. 1995. Microsatellite analysis of population structure in Canadian polar bears. Mol. Ecol. 4:347–354.

PBSG, The World Conservation Union. 1995. Polar Bears. Proc, Eleventh Working Meet. IUCN/SSC PBSG Jan. 25–28, 1993, Copenhagen, Denmark. O.Wiig, E.W. Born, and G.W. Garner, eds. Occas. Pap. IUCN Spec. Surv. Comm. No. 10. Gland, Switzerland.

PBSG, The World Conservation Union. 1997. Resolutions from the Twelfth Working Meet. IUCN/SSC PBSG Feb. 3–7, 1997.

Taylor, M.K., D.P. DeMaster, F.L. Bunnell, and R.E. Schweinsburg. 1987. Modeling the sustainable harvest of female polar bears. J. Wildl. Manage. 51:811–820.

Testa, J.W. 1997. Importation of Polar Bear Trophies from Canada under the 1994 Amendments to the Marine Mammal Protection Act. Report prepared for the Marine Mammal Commission, Washington, D.C. 9 pp.

USFWS (U.S. Fish and Wildlife Service). 1997. Importation of Polar Bear Trophies from Canada under the 1994 Amendments to the Marine Mammal Protection Act; Final Rule. 62 FR 7301. 31 pp.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends Part 18 of chapter I of Title 50 of the Code of Federal Regulations to read as follows:

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend § 18.30 by revising paragraph (i)(1) introductory text to read as follows:

§ 18.30 Polar Bear sport-hunted trophy import permits.

* * * * *

(i) *Findings.* * * *

(1) We have determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (d) (4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, M'Clintock Channel, Lancaster Sound, and Norwegian Bay, and that:

* * * * *

Dated: December 16, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–473 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 122898F]

Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program

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

ACTION: Approval of amendments to the 1998 through 2000 Multispecies Community Development Plans.

SUMMARY: NMFS announces the approval of recommendations made by the State of Alaska (State) for the amendments to the 1998 through 2000 Multispecies Community Development Plans (CDPs) under the Western Alaska Community Development Quota (CDQ) Program. This action is necessary to announce NMFS's decision to approve the State's recommendation and is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Approval of the amendments to the CDPs and the 1999 CDQ and prohibited species quota (PSQ) allocations are effective January 11, 1999.

ADDRESSES: Copies of the findings made by NMFS in approving the State's recommendations may be obtained from the Alaska Region, National Marine

Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The current pollock CDPs and pollock CDQ allocations expire on December 31, 1998. Under the regulations implementing the multispecies (MS) CDQ Program (63 FR 8356, February 19, 1998 and 63 FR 30381, June 4, 1998), pollock will be combined with the other groundfish species and managed under the MS CDQ regulations through the MS CDPs. NMFS initially approved the 1998 through 2000 MS CDPs on March 25, 1998, for Pacific halibut, fixed gear sablefish, and crab. Amendments to the 1998 through 2000 MS CDPs, which NMFS approved on September 16, 1998, added allocations for all groundfish species except pollock and fixed gear sablefish and for the prohibited species quotas. At that time, 1998 through 2000 allocation recommendations were approved for all groundfish and prohibited species, except arrowtooth flounder, squid, ''other species,'' chinook salmon PSQ, and non-chinook salmon PSQ, which were approved for 1998 only. The State recommended that 1999 and 2000 allocation recommendations for these five CDQ and PSQ categories be made at the same time the allocation recommendations were made for pollock CDQ so that bycatch needs associated with the pollock CDQ and fixed gear sablefish CDQ, both of which are being integrated into the MS CDQ Program in 1999, could be addressed.

Eligible western Alaska communities submitted six applications for amendments to the MS CDPs for pollock and the related bycatch species to the State under 50 CFR 679.30. The State conducted a public hearing on September 15, 1998, and consulted the North Pacific Fishery Management Council (Council) concerning the proposed amendments to the MS CDPs during the Council's October 1998 meeting. The Council concurred in the State's recommendations to NMFS. The State conducted a second public hearing on November 16, 1998, to discuss possible changes to its allocation recommendations as a result of the State's determination that one of the CDQ groups had not submitted a complete application.

NMFS received the State's recommended allocations of pollock CDQ and related bycatch species on November 19, 1998. These recommendations are for 1999 allocations only so that the State can assess the impact of the American Fisheries Act on the pollock CDQ fisheries prior to making pollock CDQ allocation recommendations for 2000. In reviewing the proposed amendments to the MS CDPs, the State determined that one of the CDQ groups had not included one of its CDQ investments as a CDQ project. Therefore, the State determined that only five of the six proposed CDP amendments were complete. However, the State is recommending that all of the proposed amendments to the MS CDPs, and the associated CDQ and PSQ allocation percentages for 1999, be approved. It acknowledges that current disagreements about the definition of a CDQ project remain unresolved. The State intends to conduct a comprehensive review of the CDQ Program to address this issue. Upon completion of this review, the State will make recommendations for regulatory amendments, if necessary.

In approving the State's recommendations for the 1999 percentage allocations of pollock CDQ and other related bycatch species CDQ and PSQ, NMFS recognizes that further clarification of the definition of a CDQ project is needed. NMFS further recognizes that all of the CDPs must be reviewed to ensure that this definition is consistently applied. This type of review cannot be conducted in time for NMFS to make determinations and for the CDQ groups to revise and re-submit current CDPs prior to the start of the 1999 pollock CDQ fisheries next month. Therefore, NMFS agrees to accept the State's recommendations that the amendments to the 1998 through 2000 MS CDPs be approved to add the percentage allocations of pollock and other associated bycatch species for 1999.

Prior to review of the next CDQ or PSQ allocation recommendations for 2000, NMFS will review all current CDPs to determine whether CDQ investments are properly categorized as CDQ projects. The CDQ groups will be requested to amend their CDPs if necessary. In addition, NMFS will consult with the Council and the State to determine whether proposed regulatory amendments are necessary to clarify the definition of a CDQ project.

NMFS is approving the State's recommended percentage allocation for squid in 1999. Although squid likely will be removed from the CDQ Program in 1999 under an emergency rule implementing the American Fisheries Act, approval of this percentage allocation is necessary so that it will be in place if the emergency rule expires.

The allocations to each CDQ group are presented in the table below. NMFS's findings regarding this decision are also available (see **ADDRESSES**).

SELECTED MULTISPECIES GROUNDFISH AND PROHIBITED SPECIES COMMUNITY DEVELOPMENT QUOTA ALLOCATIONS FOR 1999

Species or Species Group	APICDA (percent)	BBEDC (percent)	CBSFA (percent)	CVRF (percent)	NSEDC (percent)	YDFDA (percent)
Pollock	16	21	5	22	22	14
Arrowtooth Flounder	18	21	9	16	16	20
Squid	16	21	5	22	22	14
Other Species	19	22	9	14	15	21
Chinook Salmon PSQ	16	21	5	22	22	14
Non-chinook Salmon PSQ	16	21	5	22	22	14

APICDA = Aleutian Pribilof Island Community Development Association
BBEDC = Bristol Bay Economic Development Corporation
CBSFA = Central Bering Sea Fishermen's Association
CVRF = Coastal Villages Region Fund
NSEDC = Norton Sound Economic Development Corporation
YDFDA = Yukon Delta Fisheries Development Association
PSQ = prohibited species quota

Dated: January 5, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–532 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 6
Monday, January 11, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Public Meeting on Part 70 Rulemaking Activities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed rule; meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland, on January 13–14, 1999, to discuss the NRC staff's proposed revisions related to nuclear criticality safety as presented in SECY–98–185, ''Proposed Rulemaking—Revised Requirements for the Domestic Licensing of Special Nuclear Material,'' dated July 30, 1998.

The purpose of this meeting is to discuss the industry's concerns with the nuclear criticality safety requirements contained in SECY–98–185 and the guidance in the associated draft SRP, and the industry's proposed changes.

DATES: The meeting is scheduled for January 13–14, 1999, from 9:00 am to 4:00 pm, in One White Flint North, room 6B–11. The meeting is open to the public. Anyone with administrative questions concerning this meeting should contact Ann Lundy at (301) 415–7218.

ADDRESSES: One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Metro Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–6522, e-mail: *axp1@nrc.gov.*

SUPPLEMENTARY INFORMATION: At a public meeting held on December 3–4, 1998, to discuss SECY–098–185, ''10 CFR Part 70 Revised Requirements for the Domestic Licensing of Special Nuclear Material,'' the Nuclear Energy Institute (NEI) expressed concerns related both to the nuclear criticality safety requirements contained in the draft rule and to the implementation guidance contained in the associated draft standard review plan (SRP). Given the technical nature and extent of NEI's criticality comments, NRC concluded that the comments could be more thoroughly addressed at a separate meeting in January, which focused solely on nuclear criticality safety as it relates to the draft rule and SRP. By letter dated December 17, 1998, NEI provided preliminary comments on the NRC staff's draft nuclear criticality safety regulations and SRP chapter attached to SECY–098–185. These written comments will be discussed at the meeting.

This document and other background information can be found at NRC's Part 70 website: *http://techconf.llnl.gov/cgi-bin/library?source=*&library=dom lic lib&file=** or alternatively through NRC's home page (*http://www.nrc.gov*) under rulemaking. On the NRC home page, scroll down to and click on *Rulemaking* near the bottom of the screen. The Technical Conference Forum home page can then be accessed by clicking on *Technical Conferences.* Again click on *Technical Conferences.* Scroll down to and click on *Revised Requirements for the Domestic Licensing of Special Nuclear Material (Part 70).* To view the library of on-line documents, click on *dom lic Library* and then click on *NRC TECH CONF Text and Other Documents.* Documents may also be viewed at the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Dated at Rockville, Maryland this 4th day of January, 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Deputy Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 99–506 Filed 1–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 17

List of Approved Spent Fuel Storage Casks: Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Holtec International Hi-Star 100 cask system (Hi-Star) to the List of Approved Spent Fuel Storage Casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Hi-Star cask system under a general license.

DATES: The comment period expires March 29, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:45 am and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov or Philip Brochman, telephone (301) 415–8592, e-mail,

pgb@nrc.gov of the Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, (NWPA) directs that, ''(t)he Secretary (of the Department of Energy (DOE)) shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule on July 18, 1990 in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage casks designs. Dry storage cask systems are massive devices designed to provide shielding from direct exposure to radiation, to confine the spent fuel in a safe storage condition, and to prevent releases of radioactive material to the environment. They are designed to perform these tasks by relying on passive heat removal and confinement systems without moving parts and with minimal reliance on human intervention to safely fulfill their function for the term of storage. The 1990 rulemaking listed four casks in 10 CFR 72.214 subpart K as approved by the NRC for storage of spent fuel at power reactor sites under general license by persons authorized to possess or operate nuclear power reactors.

Discussion

This proposed rulemaking would add the Holtec International HI–STAR 100 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of subpart L, Holtec International submitted an application for NRC approval, together with its Safety Analysis Report (SAR): ''HI–STAR 100 Cask System Topical Safety Analysis Report (TSAR), Revision 8'' dated June 18, 1998. The NRC evaluated the Holtec International submittal and issued a preliminary Safety Evaluation Report (SER) on the Holtec International SAR and a proposed certificate of compliance (CoC) for the Holtec International HI–STAR 100 cask system.

The NRC is proposing to approve the Holtec International HI–STAR 100 cask system for storage of spent fuel under the conditions specified in the proposed CoC. While the HI–STAR 100 cask system is designed to be used as a dual purpose storage and transportation cask, the use or certification of the HI–STAR 100 under 10 CFR part 71 for off-site transport of spent fuel is not a subject of this rulemaking. Certification for transportation could occur only after the completion of a separate staff review of the HI–STAR 100 Safety Analysis report for transportation. Thus, issues pertaining to the transportation configuration of the HI–STAR 100 cask system are not within the scope of this rulemaking.

The HI–STAR 100 cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR part 72; thus, adequate protection of public health and safety would be ensured. This cask is being proposed for listing under 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks'' to allow holders of power reactor operating licensees to store spent fuel in this cask under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask's CoC is renewed. The certificate contains conditions for use similar to those for other NRC approved casks, however, the CoC for each cask system may differ in some specifics—such as, certificate number, operating procedures, training exercises, spent fuel specification. The proposed CoC for the Holtec International HI–STAR 100 cask system and the underlying preliminary SER, dated December 15, 1998, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed CoC may be obtained from Stan Turel, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, email spt@nrc.gov.

Future Rulemaking Procedures

The Holtec International HI-STAR 100 cask system would become the eighth cask system added to 10 CFR 72.214 list through the process of notice-and-comment rulemaking. Because the NRC believes the additions and revisions to the list of approved spent fuel storage casks are noncontroversial and routine, NRC is considering publishing future additions and revisions as direct final rules. Direct final rulemaking is a technique for expediting the issuance of noncontroversial rules. If the NRC implements this procedure in future rulemakings adding cask systems to the 10 CFR 72.214 list, the NRC would publish the proposed addition or revision to the list as both a proposed and a final rule in the **Federal Register** simultaneously. A direct final rule will normally become effective 75 days after publication in the **Federal Register**. However, if the NRC receives significant adverse comments on the direct final rule within 30 days after publication in the **Federal Register**, the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received as comments on the proposed rule and will subsequently issue a final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period in the event the direct final rule is withdrawn. The NRC is requesting comments on the use of direct final rules for future additions and revisions to the list of approved spent fuel storage casks.

Errata to the Proposed Certificate of Compliance (CoC) Preliminary SER

During NRC management review of the proposed CoC (docketed September 30, 1998, and placed in the NRC PDR) a question was identified on the 6,000 psi limit in Technical Specification 4.4.6.d, ''Soil effective modulus of elasticity.'' The question related to whether the 6,000 psi limit was too narrow and whether this limit would unnecessarily restrict which reactor sites could use the HI-STAR 100 cask. NRC staff evaluated this issue and requested the applicant provide additional information. The applicant subsequently submitted additional information and supporting analysis and requested that the soil effective modulus of elasticity limit be raised to 28,000 psi. NRC staff verified that if a 28,000 psi limit was used, the maximum cask deceleration occurring in the cask

tip-over, side drop, and bottom-end vertical-drop accident analyses would remain bounded by the existing SER analyses.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not change safety requirements and would not have significant environmental impacts. The proposed rule would add a cask known as the Holtec International HI-STAR 100 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6234, email spt@nrc.gov.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel under a general license in casks certified by the NRC. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if they notify the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L. Subsequently, two additional casks were added to the listing in 10 CFR 72.214 in 1993 and one in 1994.

The alternative to this proposed action is to withhold certification of this new design and issue a site-specific license to each utility that proposed to use the casks. However, this alternative would cost the NRC more time and money for each site-specific review. In addition, withholding certification would ignore the procedures and criteria currently in place for the addition of new cask designs. Further, it is in conflict with the Nuclear Waste Policy Act (NWPA) direction to the NRC to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive in that it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems. Further, the rule, if adopted, would have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. However, the newer cask design may have a market advantage over the existing designs because power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks.

The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. This proposed rulemaking has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and cask vendors. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule, and thus, a backfit analysis is not required for this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

In § 72.214, Certificate of Compliance (CoC) 1008 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1008
SAR Submitted by: Holtec International
SAR Title: HI–STAR 100 Cask System Topical Safety Analysis Report (TSAR), Revision 8
Docket Number: 72–1008
Certification Expiration Date: (20 years after final rule effective date)
Model Numbers: HI–STAR 100

Dated at Rockville, Maryland, this 15th day of December 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–505 Filed 1–8–99; 8:45 am]

BILLING CODE 7590–01–P

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: Clothes Washer Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Notice of extension of comment period.

SUMMARY: On November 19, 1998 (63 FR 64344), the Department of Energy published a Supplemental Advance Notice of Proposed Rulemaking to revise energy conservation standards for clothes washers under the Energy Policy and Conservation Act. The notice announced that February 2, 1999, would be the closing date for receiving public comments. At the December 15, 1998, workshop on clothes washers, Amana requested that the comment period be extended for two months, to allow additional time for understanding the financial model and to give better responses to concerns raised in the notice. The Department is committed to issuing the final rule on schedule. In light of the fact that much of the information discussed in the notice was presented at the March 11, 1998, Clothes Washer Workshop, the Department agrees to a more limited extension of the comment period.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Written comments are welcome. Please submit 10 copies (no faxes) to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Clothes Washers, Docket No. EE–RM–94–403, RIN 1904–AA67, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan Berringer@EE.DOE.GOV or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507, E-mail: Eugene.Margolis@HQ.DOE.GOV.

Issued in Washington, DC, on January 5, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–540 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–318–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of Teflon sleeving over the electrical cable. This action would expand the inspection requirement to include additional airplanes, add repetitive inspections for all airplanes, and reidentify the requirement to install Teflon sleeving as a nonterminating action. This proposal is prompted by the FAA's determination that Model 737–100 through –500 series airplanes that are not affected by the current AD must also be protected against excessive wire chafing of the fuel boost pump wiring and that all affected airplanes must be repetitively inspected. The actions specified by the proposed AD are intended to detect and correct chafing and prevent electrical arcing between the fuel boost pump wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: Comments must be received by February 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–318–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket Number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–318–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–318–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 23, 1998, the FAA issued AD 98–19–09, amendment 39–10751 (63 FR 52152, September 30, 1998), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, to require removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of Teflon sleeving over the electrical cable. The actions of that AD were required for airplanes that had accumulated 20,000 or more total flight hours. That AD was prompted by reports of severe wear of the fuel boost pump wiring due to chafing between the wiring and the surrounding conduit inside the fuel tank; pin-hole-sized holes in the conduit that appear to be the result of arc-through of the conduit; and exposure of the main tank boost pump wire conductor inside a conduit and signs of arcing to the wall of the conduit. The requirements of that AD are intended to detect and correct chafing and electrical arcing between the fuel boost pump wiring and the surrounding conduit, which, if not corrected, could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

Actions Since Issuance of Previous Rule

In the preamble to AD 98–19–09, the FAA indicated it was considering further rulemaking action to require inspection of Model 737 series airplanes that have accumulated less than 20,000 total flight hours. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination. The FAA has determined that it is necessary to expand the inspection requirement to ensure that excessive wire chafing does not occur on those airplanes.

The FAA has examined wire bundles that were removed and inspected for chafing in accordance with telegraphic AD's T98–10–51 (issued on May 7, 1998) and T98–11–51 (issued on May 10, 1998) and AD 98–11–52 (63 FR 34271, June 24, 1998). Based on the findings, the FAA tabulated levels of wire chafing as a function of airplane flight hours. Based on the tabulated data, the FAA has determined that it is necessary to define long-term repetitive inspection intervals to address the identified unsafe condition for the entire fleet of 737–100 through –500 series airplanes. In consideration of these data and the additional layer of Teflon sleeving installed for further protection of the wire bundles, the FAA proposes a repetitive inspection interval of 30,000 flight hours.

In light of the new proposed repetitive inspections, the installation of Teflon sleeving required by AD 98–19–09, which terminates the requirements of that AD, would not terminate the requirements of this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–28A1120,

Revision 2, dated November 26, 1998. The procedures described in Revision 2 of this service bulletin are essentially identical to those described in Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998 (which was referenced as an appropriate source of service information in AD 98–19–09). Revision 2 removes certain airplanes from the effectivity listing and specifies different parts to be provided in the parts kit by the manufacturer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–19–09 to continue to require removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of Teflon sleeving over the electrical cable. This action would additionally require that the inspection be conducted at repetitive intervals and that the inspection be accomplished on airplanes that have accumulated less than 20,000 total flight hours. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below. The proposed AD also would require that operators report results of the initial inspection to the FAA.

Difference Between the Proposed AD and the Service Bulletin

Operators should note that, while Boeing Service Bulletin 737–28A1120, Revision 2, limits its effectivity to airplanes having line numbers 1 through 3072 inclusive, this proposed AD would be applicable to all Model 737–100 through -500 series airplanes.

Cost Impact

There are approximately 2,866 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,131 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 98–19–09, and retained in this AD, takes approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. This new AD action would require repetitive performance of that inspection. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,035,800, or $1,800 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10751 (63 FR 52152, September 30, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–318–AD. Supersedes AD 98–19–09, Amendment 39–10751.

Applicability: All Model 737–100, -200, -300, -400, and -500 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 (n)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and prevent electrical arcing between the fuel boost pump wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank, accomplish the following:

Inspections Required by AD 98–11–52

(a) For all airplanes that have accumulated 50,000 or more total flight hours as of June 29, 1998 (the effective date of AD 98–11–52, amendment 39–10611): Prior to further flight, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(b) For all airplanes that have accumulated less than 50,000 total flight hours as of receipt of telegraphic AD T98–11–51: Prior to the accumulation of 40,000 total flight hours, or within 14 days after June 29, 1998, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

(c) For all airplanes: Remove the fuel boost pump wiring from the in-tank conduit for the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998. Accomplish the inspection at the earliest of the times specified in paragraphs (c)(1), (c)(2), and (c)(3).

(1) For Model 737–300, –400, and –500 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 14 days after June 29, 1998, whichever occurs later.

(2) For Model 737–100 and –200 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 10 days after June 29, 1998, whichever occurs later.

(3) For all airplanes: Inspect prior to the accumulation of 50,000 total flight hours, or within 5 days after June 29, 1998, whichever occurs later.

(d) For all airplanes: Prior to the accumulation of 30,000 total flight hours or within 45 days after June 29, 1998, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

Inspection Required by AD 98–19–09

(e) For airplanes that have accumulated 20,000 or more total flight hours and less than 30,000 total flight hours as of October 15, 1998 (the effective date of AD 98–19–09, amendment 39–10751): Within 60 days after October 15, 1998, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

New Inspection Requirements

(f) For airplanes that have accumulated less than 20,000 total flight hours as of October

15, 1998: Remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; at the earlier of the times specified in paragraphs (f)(1) and (f)(2) of this AD; in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Prior to the accumulation of 20,000 total flight hours, or within 60 days after the effective date of this AD, whichever occurs later.

(2) Within 24 months after the effective date of this AD.

(g) For all airplanes: Repeat the inspection required by paragraph (d), (e), or (f) of this AD, as applicable, at intervals not to exceed 30,000 flight hours after initial accomplishment of the applicable inspection.

Corrective Actions

(h) If red, yellow, blue, or green wire insulation cannot be seen through the outer jacket of the electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraph (h)(1), (h)(2), or (h)(3) of this AD in accordance with procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

(1) Install Teflon sleeving over the electrical cable, and reinstall the cable. Or

(2) Reinstall the electrical cable without Teflon sleeving over the cable. Within 500 flight hours after accomplishment of the reinstallation, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable. Or

(3) Replace the electrical cable with new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection specified in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(i) If red, yellow, blue, or green wire insulation can be seen through the outer jacket of the electrical cable during any inspection required by this AD, but no evidence of electrical arcing is found: Prior to further flight, accomplish either paragraph (i)(1) or (i)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(2) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(j) If any evidence of electrical arcing but no evidence of fuel leakage is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (j)(1) and (j)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Verify the integrity of the conduit in accordance with the instructions contained in NSC 03, Revision 1, or Revision 2 of the alert service bulletin. And

(2) Accomplish either paragraph (j)(2)(i) or (j)(2)(ii) of this AD in accordance with the alert service bulletin.

(i) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(k) If any evidence of fuel is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (k)(1) and (k)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Replace the conduit section where electrical arcing was found. And

(2) Accomplish either paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(l) For Groups 1 and 2 airplanes, as identified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998: Concurrent with the first accomplishment of corrective action in accordance with paragraph (h), (i), (j), or (k) of this AD, as applicable, replace the case ground wire with a new wire in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(m) If any damage specified in paragraph (h), (i), or (j) of this AD is found during the initial inspection required by paragraph (a), (b), (c), (d), (e), or (f) of this AD, as applicable: Within 10 days after accomplishing that initial inspection, accomplish paragraphs (m)(1) and (m)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Submit any damaged electrical cables and conduits to Boeing, in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998. Include the serial number of the airplane, the number of total flight hours and flight cycles accumulated on the airplane, and the location of the electrical cable on the airplane.

(2) For airplanes that are inspected after June 29, 1998, submit the serial number of the airplane, the number of total flight hours and flight cycles accumulated on the airplane, and the location of the electrical cable on the airplane to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

(n)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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, Seattle ACO.

(n)(2) Alternative methods of compliance, approved previously in accordance with AD 98–11–52 and AD 98–19–09, are approved as alternative methods of compliance with this AD.

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

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

Issued in Renton, Washington, on December 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–482 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require inspections of certain bonded skin panel assemblies to detect delamination of the skin doublers (tear straps) from the skin panels; and follow-on corrective actions, if necessary. This proposal is prompted by reports indicating that certain skin doublers were delaminated from their skin panels due to improper processing of certain skin panels. The actions specified by the proposed AD are intended to detect and correct such delamination, which could result in fatigue cracks in the skin doublers and skin panels, and consequent rapid decompression of the airplane.

DATES: Comments must be received by February 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that skin doublers (tear straps) were found delaminated from their skin panels on certain Boeing Model 737 series airplanes. These airplanes had accumulated as few as 10,200 total flight cycles. The subject skin doublers and skin panels are installed above stringer S–26 from body station (BS) 259 to BS 1016 on both sides of the airplane. The cause of such delamination in all incidents has been attributed to improper processing during the phosphoric anodize application of the skin panels. This condition, if not detected and corrected, could result in fatigue cracks in the skin doublers and skin panels, and consequent rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change (NSC) 737–53–1179 NSC 1, dated August 17, 1995, which describes procedures for performing a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies to detect delamination of the skin doublers from the skin panels; and follow-on corrective actions, if necessary.

The above inspection includes an internal close visual inspection (Figure 3 of the service bulletin), an internal close visual inspection while trying to separate the skin doublers from the skin panels (Figure 3 of the service bulletin), and an ultrasonic inspection (Figure 4 of the service bulletin). The service bulletin recommends that operators perform these inspections on bonded skin panel assemblies, which are composed of skin doublers (tear straps) that are bonded to skin panels located above stringer S–26 from BS 259 to BS 1016 on both sides of the airplane. In lieu of accomplishing the internal close visual inspections of bonded skin panel assemblies (Figure 3 of the service bulletin), the service bulletin describes procedures for performing an internal or external ultrasonic inspection to detect delamination.

The follow-on corrective actions include internal close visual, low frequency eddy current, and high frequency eddy current inspections; and repair, if necessary. The service bulletin recommends that operators perform such inspections to detect corrosion and cracks that may have resulted from any skin doubler delaminating from its skin panel.

The service bulletin also describes procedures for performing repetitive external visual inspections (interim inspection) to detect cracks in skin panels; and repair, if necessary. This service bulletin recommends that operators perform the external visual inspections until accomplishment of the one-time internal inspection described previously.

Boeing has also issued NSC 737–53–1179 NSC 1, dated August 17, 1995. This NSC contains no new technical information but corrects two typographical errors and adds a general note.

Accomplishment of the actions specified in the service bulletin and the NSC are intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin and the NSC described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing a one-time internal inspection (terminating inspection), as described previously, prior to the accumulation of 40,000 total flight cycles or within 20,000 flight cycles after the release of the service bulletin, whichever occurs later, the FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. As described previously, operators have found doublers delaminated from skin panels on certain Boeing Model 737 series airplanes that had accumulated as few as 10,200 total flight cycles. The FAA has determined that to have a high probability of detecting cracking before it reaches a critical length, the inspections described previously must be accomplished prior to the accumulation of 20,000 total flight cycles. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the one-time inspection (136 work hours). In light of all of these factors, the FAA finds that a proposed compliance time of 20,000 total flight cycles, or 4,500 flight cycles or 18 months after the effective date of this AD, whichever occurs later, for initiating the proposed actions to be warranted. The FAA has determined that the proposed compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

For those operators that elect to perform repetitive external visual inspections (i.e., the interim inspection), the service bulletin recommends accomplishing the one-time inspections within 20,000 flight cycles (after the release of the service bulletin). For the same reasons stated above, the FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. Therefore, the FAA finds that a proposed compliance time of 15,000 flight cycles or 60 months after the effective date of this proposed AD, whichever occurs first, for initiating the proposed actions [i.e., the one-time (terminating) inspection] to be warranted. The FAA has determined that the proposed compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that the service bulletin does not specify that the one-time inspection be accomplished after airplanes accumulate 4,500 flight cycles on certain bonded skin panel assemblies. Service history indicates that the bonded skin panel assemblies on the affected airplanes need to be subjected to a minimal amount of loading and environment before disbonding becomes detectable. For this reason, the FAA finds a 4,500 flight cycle interval to be an appropriate interval of time for ensuring that the operators are able to detect delamination of the skin doublers from the skin panels. Therefore, the proposed AD requires that the one-time inspection be performed after the affected airplanes accumulate 4,500 total flight cycles or after the affected airplanes accumulate 4,500 flight cycles after the date of installation of any new or serviceable bonded skin panel assembly.

Although the effectivity listing of the service bulletin includes airplanes having line numbers 611 through 2725 inclusive, the applicability of this proposed AD includes airplanes having line numbers 1 through 3072 inclusive. The service bulletin does not specify that operators perform an inspection of any new or serviceable bonded skin panel assembly that was installed prior to October 1, 1997, on any airplane having line numbers 1 through 3072 inclusive. The FAA has determined that the identified unsafe condition could exist or develop on those airplanes having such replacement bonded skin panel assemblies. In light of this, the FAA finds that it is necessary that the applicability of this proposed AD include Boeing Model 737 series airplanes on which the bonded skin panel assemblies were replaced with any new or serviceable bonded skin panel assemblies prior to October 1, 1997. Therefore, the applicability of this proposed AD includes line numbers 1 through 3072 inclusive.

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Additionally, the service bulletin specifies that certain actions may be accomplished in accordance with ''an equivalent'' procedure. However, this proposed AD requires that those actions be accomplished in accordance with the procedures specified in Part 6, Subject 51–00–00, Figure 4, of the 737 Nondestructive Test Manual. An ''equivalent'' procedure may be used only if approved as an alternative method of compliance in accordance with the provisions of paragraph (j) of the proposed AD.

Cost Impact

There are approximately 2,083 airplanes of the affected design in the worldwide fleet. The FAA estimates that 863 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 136 work hours per airplane to accomplish the proposed terminating inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the terminating inspection proposed by this AD on U.S. operators is estimated to be $7,042,080, or $8,160 per airplane.

It would take approximately 32 work hours per airplane to accomplish the proposed interim inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the interim inspection proposed by this AD on U.S. operators is estimated to be $1,656,960, or $1,920 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–11–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, line numbers 1 through 3072 inclusive, certified in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) 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.

Note 2: Where there are differences between this AD and the referenced service bulletin, the AD prevails.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct delamination of the skin doublers (tear straps) from the skin panels, which could result in fatigue cracks in the skin doublers and the skin panels, and consequent rapid decompression of the airplane, accomplish the following:

(a) For airplanes having line numbers 611 through 2725 inclusive, on which any bonded skin panel assembly has not been replaced with any new or serviceable bonded skin panel assembly: Accomplish the actions required either by paragraph (a)(1) of this AD, or by both paragraphs (a)(2) and (a)(3) of this AD, in accordance with Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995.

Note 3: For the purposes of this AD, bonded skin panel assemblies consist of skin doublers (tear straps) that are bonded to skin panels located above stringer S–26 from body station (BS) 259 to BS 1016 on both sides of the airplane.

Note 4: If the skin panel is solid with no doublers (tear straps) bonded to it, the inspections required by this AD are not necessary for that skin panel.

(1) Prior to the accumulation of 20,000 total flight cycles, but after the accumulation of 4,500 total flight cycles; or within 18 months or 4,500 flight cycles after the effective date of this AD; whichever occurs latest; perform a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies to detect delamination of the skin doublers from the skin panels, in accordance with Figures 3 and 4 of the service bulletin. In lieu of accomplishing the inspections specified in Figure 3 of the service bulletin, operators can perform an internal or external ultrasonic inspection in accordance with Note 1. of paragraph A. of the ''Terminating Inspection'' Section of the Accomplishment Instructions of the service bulletin.

Note 5: For the purposes of this AD, the one-time internal inspection includes an internal close visual inspection (Figure 3), an internal close visual inspection while trying to separate the skin doublers from the skin panels (Figure 3), and an ultrasonic inspection (Figure 4).

(2) Within 4,500 flight cycles or 18 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the bonded skin panel assemblies to detect cracks in the skin panels, in accordance with paragraph A. of the ''Interim Inspection'' Section of the Accomplishment Instructions of the service bulletin. Repeat the external visual inspection thereafter at intervals not to exceed 4,500 flight cycles, until accomplishment of the requirements specified in paragraph (a)(3) of this AD.

(3) Within 15,000 flight cycles or 60 months after the effective date of this AD, whichever occurs first, accomplish the one-time internal inspection required by paragraph (a)(1) of this AD. Accomplishment of this action constitutes terminating action for the repetitive inspections required by paragraph (a)(2) of this AD.

(b) For airplanes having line numbers 611 through 2725 inclusive, on which any bonded skin panel assembly was replaced with any new or serviceable bonded skin panel assembly prior to October 1, 1997: Accomplish the actions required by both paragraphs (b)(1) and (b)(2) of this AD, or by both paragraphs (b)(3) and (b)(4) of this AD, in accordance with Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995.

(1) Prior to the accumulation of 20,000 total flight cycles, but after the accumulation of 4,500 total flight cycles; or within 4,500 flight cycles or 18 months after the effective date of this AD; whichever occurs latest; perform a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies that have not been replaced to detect delamination of the skin doublers from the skin panels, in accordance with Figures 3 and 4 of the service bulletin. In lieu of accomplishing the inspections specified in Figure 3 of the service bulletin, operators can perform an internal or external ultrasonic inspection in accordance with Note 1. of paragraph A. of the ''Terminating Inspection'' Section of the Accomplishment Instructions of the service bulletin.

(2) Prior to the accumulation of 20,000 flight cycles after the date of replacement of the skin panel assembly, but not prior to the accumulation of 4,500 flight cycles after the date of such replacement; or within 4,500 flight cycles or 18 months after the effective date of this AD; whichever occurs latest; perform a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies that have been replaced to detect delamination of the skin doublers from the skin panels, in accordance with Figures 3 and 4 of the service bulletin. In lieu of accomplishing the inspections identified in Figure 3 of the service bulletin, operators can perform an internal or external ultrasonic inspection in accordance with Note 1. of paragraph A. of the ''Terminating Inspection'' Section of the Accomplishment Instructions of the service bulletin.

(3) Within 4,500 flight cycles or 18 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the skin panel assemblies that have and have not been replaced to detect cracks in the skin panels, in accordance with paragraph A. of the ''Interim Inspection'' Section of the Accomplishment Instructions of the service bulletin. Repeat the external visual inspection thereafter at intervals not to exceed 4,500 flight cycles, until accomplishment of the requirements specified in paragraph (b)(4) of this AD.

(4) Within 15,000 flight cycles or 60 months after the effective date of this AD, whichever occurs first, accomplish the one-time internal inspection required by both paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of this action constitutes terminating action for the repetitive inspections required by paragraph (b)(3) of this AD.

(c) For airplanes having line numbers 611 through 2725 inclusive, on which any

bonded skin panel assembly was replaced with any new or serviceable bonded skin panel assembly after September 30, 1997: Accomplish the actions required either by paragraph (c)(1) or by both paragraphs (c)(2) and (c)(3) of this AD, in accordance with Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995.

(1) Prior to the accumulation of 20,000 total flight cycles, but not prior to the accumulation of 4,500 total flight cycles; or within 4,500 flight cycles or 18 months after the effective date of this AD; whichever occurs latest; perform a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies that have not been replaced to detect delamination of the skin doublers from the skin panels, in accordance with Figures 3 and 4 of the service bulletin. In lieu of accomplishing the inspections identified in Figure 3 of the service bulletin, operators can perform an internal or external ultrasonic inspection in accordance with NOTE 1. of paragraph A. of the ''Terminating Inspection'' Section of the Accomplishment Instructions of the service bulletin.

(2) Within 4,500 flight cycles or 18 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the bonded skin panel assemblies that have not been replaced to detect cracks in the skin panels, in accordance with paragraph A. of the ''Interim Inspection'' Section of the Accomplishment Instructions of the service bulletin. Repeat the external visual inspection thereafter at intervals not to exceed 4,500 flight cycles, until accomplishment of the requirements specified in paragraph (c)(3) of this AD.

(3) Within 15,000 flight cycles or 60 months after the effective date of this AD, whichever occurs first, accomplish the one-time internal inspection required by paragraph (c)(1) of this AD. Accomplishment of this action constitutes terminating action for the repetitive inspections required by paragraph (c)(2) of this AD.

(d) For airplanes having line numbers 1 through 610 inclusive, and 2726 through 3072 inclusive, on which any bonded skin panel assembly was replaced with any new or serviceable bonded skin panel assembly prior to October 1, 1997: Accomplish the actions required either by paragraph (d)(1) or by both paragraphs (d)(2) and (d)(3) of this AD, in accordance with Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995.

(1) Prior to the accumulation of 20,000 flight cycles after the date of replacement of the skin panel assembly, but not prior to the accumulation of 4,500 flight cycles after the date of such replacement; or within 4,500 flight cycles or 18 months after the effective date of this AD; whichever occurs latest; perform a one-time internal inspection (terminating inspection) of the bonded skin panel assemblies that have been replaced to detect delamination of the skin doublers from the skin panels, in accordance with Figures 3 and 4 of the service bulletin. In lieu of accomplishing the inspections specified in Figure 3 of the service bulletin, operators can perform an internal or external ultrasonic inspection in accordance with NOTE 1. of paragraph A. of the ''Terminating Inspection'' Section of the Accomplishment Instructions of the service bulletin.

(2) Within 4,500 flight cycles or 18 months after the effective date of this AD, whichever occurs later, perform an external visual inspection of the bonded skin panel assemblies that have been replaced to detect cracks in the skin panels, in accordance with paragraph A. of the Interim Inspection of the Accomplishment Instructions of the service bulletin. Repeat the external visual inspection thereafter at intervals not to exceed 4,500 flight cycles, until accomplishment of the requirements specified in paragraph (d)(3) of this AD.

(3) Within 15,000 flight cycles or 60 months after the effective date of this AD, whichever occurs first, accomplish the one-time internal inspection required by paragraph (d)(1) of this AD. Accomplishment of this action constitutes terminating action for the repetitive inspections required by paragraph (d)(2) of this AD.

(e) If any crack is detected during any inspection required by paragraph (a)(2), (b)(3), (c)(2), or (d)(2) of this AD, prior to further flight, accomplish the actions required by paragraph (b)(1) and (b)(2) of this AD, as applicable.

(1) If any crack is detected in any skin panel that is above stringer S–10 or between stringers S–14 and S–26, repair in accordance with Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995.

(2) If any crack is detected in any skin panel that is between stringers S–10 and S–14 (window belt), repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(f) If no delamination is detected during any inspection required by paragraph (a)(1), (a)(3), (b)(1), (b)(2), (b)(4), (c)(1), (c)(3), (d)(1), or (d)(3) of this AD, no further action is required by this AD.

(g) If any delamination is detected during any inspection required by paragraph (a)(1), (a)(3), (b)(1), (b)(2), (b)(4), (c)(1), (c)(3), (d)(1), or (d)(3) of this AD, prior to further flight, accomplish the actions required by either paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If the delaminated area is less than 3 square inches and is not at the edge of a skin doubler or under a fastener head, no further action is required by this AD for that delaminated area.

(2) If the delaminated area is equal to or greater than 3 square inches or is located at the edge of a skin doubler or under a fastener head, prior to further flight, accomplish the follow-on corrective actions in accordance with the ''Terminating Inspection'' Section of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995, except as provided by paragraphs (h) and (i) of this AD.

(h) Where Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995, specifies that the actions required by this AD may be accomplished in accordance with an ''equivalent'' procedure, the actions must be accomplished in accordance with the chapter of the Boeing 737 Nondestructive Test Manual specified in the service bulletin.

(i) Where Boeing Service Bulletin 737–53–1179, dated June 22, 1995, as revised by Notice of Status Change 737–53–1179 NSC 1, dated August 17, 1995, specifies that the repair of a delaminated lap splice is to be accomplished in accordance with instructions received from Boeing, this AD requires that the repair be accomplished in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(j) 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 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on December 31, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–481 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–54]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires initial and repetitive in-shop or on-wing inspections of the diffuser case rear rail for cracking, and removal, if necessary, of the diffuser case. This action would reduce the allowable crack length, reduce the inspection intervals, and introduce an improved inspection method. This proposal is prompted by a report of an additional diffuser case rupture, and improved understanding of crack propagation rates. The actions specified by the proposed AD are intended to prevent diffuser case rupture, an uncontained engine failure, and damage to the aircraft.

DATES: Comments must be received by March 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 94–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–54.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 94–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 29, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive AD 94–26–06, Amendment 39–9102 (59 FR 67176, December 29, 1994), applicable to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 series turbofan engines, to require initial and repetitive in-shop or on-wing inspections of the diffuser case rear rail for cracking, and removal, if necessary, of the diffuser case. That action was prompted by multiple reports of diffuser case rear rail cracking and two reports of diffuser case rupture. That condition, if not corrected, could result in diffuser case rupture, uncontained engine failure, and damage to the aircraft.

Since the issuance of that AD, the FAA has received a report of an additional diffuser case rupture. Based on new information regarding crack propagation rates on repaired diffuser cases, on-wing and in-shop findings of additional cracked diffuser cases and further refinement of inspection techniques the manufacturer has significantly changed the inspection program.

The FAA has reviewed and approved the technical contents of PW JT9D Service Bulletin (SB) No. 5749, Revision 8, dated October 30, 1998, that describes procedures for initial and repetitive in-shop and on-wing fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of diffuser case rear rails for cracks. PW JT9D SB No. 5749, Revision 8, dated October 30, 1998, references PW JT9D SB No. 5654, dated January 21, 1986, that describes procedures for blending and polishing the rear rail top surface to remove electrochemical machining (ECM) marks and fatigued material; and PW JT9D SB No. 5768, Revision 6, dated March 23, 1995, that describes procedures for skim cutting the diffuser case rear rail top surface to remove electrochemical machining (ECM) marks and fatigued material; and PW JT9D SB No. 6197, Revision 1, dated March 23, 1995, that describes procedures for skim cutting fatigued material from the rear rail top surface. PW JT9D SB No. 5749, Revision 8, dated October 30, 1998, varies the initial and repetitive inspection intervals based on the incorporation of these SBs referenced above, and the parts' age in cycles.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–26–06 to reduce the allowable crack length, reduce the inspection intervals, and introduce an improved inspection method. Initial and repetitive intervals would vary depending upon rail improvement SB incorporation—higher inspection intervals are allowed after surface finish improvements of the rear rail top surface to remove ECM marks, fatigued material, and sharp edges have been incorporated. The actions would be required to be accomplished in accordance with the appropriate SBs described previously.

There are approximately 566 engines of the affected design in the worldwide fleet. The FAA estimates that 157 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 29 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $273,180.

The regulations proposed herein would 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 proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9102 (59 FR 67176, December 29, 1994), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 94–ANE–54. Supersedes AD 94 2606, Amendment 39–9102.

Applicability: Pratt & Whitney (PW) JT9D–59A, –70A, 7Q, and –7Q3 series turbofan engines, installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case rupture, an uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) Perform initial and repetitive fluorescent penetrant inspections (FPI) or eddy current inspections (ECI) of diffuser case rear rails for cracks in accordance with the Accomplishment Instructions of PW JT9D (SB) No. 5749, Revision 8, dated October 30, 1998, as follows:

(1) For engines on-wing that have not had the diffuser case rear rail FPI or ECI inspected using the procedures referenced in PW JT9D SB No. 5749, Revision 4, dated April 25, 1989; Revision 5, dated September 29, 1995; Revision 6, dated May 8, 1998; Revision 7, dated August 19, 1998; or Revision 8, dated October 30, 1998; Section 2, Part 1A (1)–(3), accomplish the following:

(i) Perform an initial on-wing inspection within 25 cycles of the effective date of this AD in accordance with Section 2, Part 2 of PW JT9D SB No. 5749, Revision 8, dated October 30, 1998.

(ii) Thereafter, except as provided in paragraph (a)(4) of this AD, perform on-wing inspections in accordance with the time requirements listed in Section 2, Part 2 of PW JT9D SB No. 5749, Revision 8, dated October 30, 1998.

(2) For engines on-wing that have had the diffuser case rear rail FPI or ECI inspected using the procedures referenced in PW JT9D SB No. 5749, Revision 4, dated April 25, 1989; Revision 5, dated September 29, 1995; Revision 6, dated May 8, 1998; Revision 7, dated August 19, 1998; or Revision 8, dated October 30, 1998; Section 2, Part 1 A (1)–(3), perform initial and repetitive on-wing inspections in accordance with PW JT9D SB 5749, Revision 8, dated October 30, 1998, within the time requirements listed in Section 2, Part 2 of that SB, except as provided in paragraph (a)(4) of this AD.

(3) Remove from service diffuser cases that do not meet the return to service criteria stated in PW JT9D SB No. 5749, Revision 8, dated October 30, 1998, Section 2, Part 2 D, and replace with serviceable parts.

(4) For engines that are overdue for an inspection on the effective date of this AD, accomplish the required inspection within 25 cycles in service of the effective date of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on January 5, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–492 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ALG–71]

Proposed Modification of Class E Airspace; Toledo, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to modify Class E airspace at Toledo, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP), 291° helicopter point in space approach, has been developed for Fulton County Health Center Heliport, a GPS SIAP 136° helicopter point in space approach, has been developed for Medical College of Ohio Hospital Heliport, a GPS SIAP 168° helicopter point in space approach, has been developed for Wood County Hospital Heliport, a GPS SIAP 276° helicopter point in space approach, has been developed for St. Vincent Hospital Heliport, and a GPS SIAP 306° helicopter point in space approach, has been developed for Toledo Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing these approaches. This action proposes to modify existing controlled airspace for Toledo, OH, in order to include the point in space approaches serving these hospital heliports.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–71, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air

Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–71.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comment received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Toledo, OH, to accommodate aircraft executing the proposed GPS SIAP 291° helicopter point in space approach for Fulton County Health Center Heliport, a GPS SIAP 136° helicopter point in space approach for Medical College of Ohio Hospital Heliport, a GPS SIAP 168° helicopter point in space approach for Wood County Hospital Heliport, a GPS SIAP 276° helicopter point in space approach for St. Vincent Hospital Heliport, and a GPS SIAP 306° helicopter point in space approach for Toledo Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing these approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Toledo, OH [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41° 40′ 00″ N., long. 84° 20′ 00″ W, to lat. 41° 49′ 00″ N., long. 83° 37′ 00″ W., to lat. 41° 45′ 00″ N., long. 83° 22′ 00″ W, to lat. 41° 34′ 00″ N., long. 83° 19′ 00″ W, to lat. 41° 15′ 00″ N., long. 83° 34′ 00″ W, to lat. 41° 22′ 00″ N., long, 84° 05′ 00″ W, to lat. 41° 30′ 00″ N., long. 84° 15′ 00″ W, to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–500 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–67]

Proposed Modification of Class E Airspace; Defiance, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Defiance, OH. A Global Positioning System (GPS) Standard Instrument Approach

Procedure (SIAP), 320° helicopter point in space approach, has been developed for Defiance Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Defiance, OH, in order to include the point in space approach serving Defiance Hospital Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–67, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–67.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket. FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Defiance, OH, to accommodate aircraft executing the proposed GPS SIAP 320° helicopter point in space approach for Defiance Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Defiance, OH [Revised]

Defiance Memorial Airport, OH
(Lat. 41°20′15″ N., long. 84°25′44″ W)
Defiance Hospital, OH
Point in Space Coordinates
(Lat. 41°16′32″ N., long. 84°19′54″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Defiance Memorial Airport, and within a 6.0-mile radius of the Point in Space serving Defiance Hospital.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–504 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–69]

Proposed Modification of Class E Airspace; Lima, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Lima, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 280° helicopter point in space approach, has been developed for Saint Rita's Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Lima, OH, in order to include the point in space approach serving Saint Rita's Medical Center Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–69, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–69.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Lima, OH, to accommodate aircraft executing the proposed GPS SIAP 280° helicopter point in space approach for Saint Rita's Medical Center Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Lima, OH [Revised]

Lima Allen County airport, OH
(Lat. 40°42′25″ N., long. 84°01′36″ W)
Allen County VOR

(Lat. 40°42′26″ N., long. 83°58′05″ W)
Saint Rita's Medical Center, OH
Point in Space Coordinates
(Lat. 40°43′58″ N., long. 84°06′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lima Allen County Airport and within 3.0 miles each side of the Allen County VOR 090° radial, extending from the 6.4-mile radius to 7.4 miles east of the VOR, and within a 6.0-mile radius of the Point in Space serving Saint Rita's Medical Center, excluding the airspace within the Findley, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–503 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–68]

Proposed Modification of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to modify Class E airspace at Bryan, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 010° helicopter point in space approach, has been developed for Community Hospitals of Williams County, Inc. Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Bryan, OH, in order to include the point in space approach serving Community Hospitals of Williams County, Inc. Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–68, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–68.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Avilability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS SIAP 010° helicopter point in space approach for Community Hospitals of Williams County, Inc. Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Bryan, OH [Revised]

Bryan, William County Airport, OH
(Lat. 41° 28′ 02″ N., long 84° 30′ 23″ W)
Bryan NDB
(Lat. 41° 28′ 47″ N., long. 84° 27′ 58″ W)
Community Hospitals of Williams County, Inc., OH
Points in Space Coordinates
(Lat. 41° 27′ 47″N, long. 84° 33′ 28″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–502 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–70]

Proposed Modification of Class E Airspace; Tiffin, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Tiffin, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 203° helicopter point in space approach, has been developed for Mercy Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Tiffin, OH, in order to include the point in space approach serving Mercy Hospital Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–70, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–70.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lake Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Tiffin, OH, to accommodate aircraft executing the proposed GPS SIAP 203° helicopter point in space approach for Mercy Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Tiffin, OH [Revised]

Tiffin, Seneca County Airport, OH
(Lat. 40° 05′ 35″ N., long. 83° 12′ 46″ W)
Mercy Hospital, OH
Point in Space Coordinates
(Lat. 41° 07′ 21″ N., long. 83° 11′ 33″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Seneca County Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Hospital.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, AIr Traffic Division.

[FR Doc. 99–501 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–73]

Proposed Modification of Class E Airspace; Port Clinton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Port Clinton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 007° helicopter point in space approach, has been developed for Magruder Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Port Clinton, OH, in order to include the point in space approach serving Magruder Memorial Hospital Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–73, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–73.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Port Clinton, OH, to accommodate aircraft executing the proposed GPS SIAP 007° helicopter point in space appraoach for Magruder Memorial Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Port Clinton, OH [Revised]

Port Clinton, Carl R. Keller Field Airport, OH
(Lat. 41°30′59″ N., long. 82°52′07″ W)
Magruder Memorial Hospital, OH
Point in Space Coordinates
(Lat. 41°29′43″ N., long. 82°55′50″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Carl R. Keller Field Airport and within 6.0 mile radius of the Point in Space serving Magruder Memorial Hospital.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–499 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–72]

Proposed Modification of Class E Airspace; Napoleon, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Napoleon, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 186° helicopter point in space approach, has been developed for Henry County Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Napoleon, OH, in order to include the point in space approach serving Henry County Hospital Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–72, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–72.'' 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 acting on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Napoleon, OH, to accommodate aircraft executing the proposed GPS SIAP 186° helicopter point in space approach for Henry County Hospital Heliport by modifying existing Controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10,

1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Napoleon, OH [Revised]

Napoleon, Henry County Airport, OH
(Lat. 41°22′ 27″ N., long. 84°04′ 05″ W)
Henry Country Hospital, OH
Point in Space Coordinates
(Lat. 41° 25′ 08″ N., long. 84°04′ 05″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Henry County Airport, and within a 6.0-mile radius of the Point in Space serving Henry County Hospital, excluding the airspace within the Toledo, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–498 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–74]

Proposed Establishment of Class E Airspace; Kelleys Island, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Kelleys Island, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 270° helicopter point in space approach, has been developed for Kelleys Island Land Field Airport, a GPS SIAP 090° helicopter point in space approach, has been developed for Middle Bass Island Airport, and a GPS SIAP 030° helicopter point in space approach, has been developed for Put In Bay Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing these approaches. This action proposes to create controlled airspace for Kelleys Island, OH, in order to include the point in space approaches serving these airports.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–74, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–74.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR 71 to establish Class E airspace at Kelleys Island, OH, to accommodate aircraft executing the proposed GPS SIAP 270° helicopter point in space approach for Kelleys Island Land Field Airport, a GPS SIAP 090° helicopter point in space approach for Middle Bass Island Airport, and a GPS SIAP 030° helicopter point in space approach for Put In Bay Airport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing these approaches.

The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Kelleys Island, OH [New]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°40′30″ N., long 82°30′00″ W, to lat. 41°30′00″ N., long. 82°30′00″ W, to lat. 41°30′00″ N., long. 82°45′00″ W, to lat. 41°34′00″ N., long. 83°00′00″ W, to lat. 41°40′00″ N., long. 83°00′00″ W, to lat. 41°47′00″ N., long. 82°54′00″ W, thence along the Canada/United States border to the point of beginning, excluding the airspace within the Port Clinton, OH, and Sandusky, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–497 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–76]

Proposed Establishment of Class E Airspace; Glencoe, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Glencoe, MN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Glencoe Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would create controlled airspace for Glencoe Municipal Airport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–76, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–76.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East

Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Glencoe, MN, to accommodate aircraft executing the proposed NDB Rwy 31 SIAP at Glencoe Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MN E5 Glencoe, MN [New]

Glencoe Municipal Airport, MN
(Lat. 44° 45′ 22″ N, long. 94° 04′ 52″ W)
Glencoe NDB
(Lat. 44° 45′ 39″ N, long. 94° 05′ 09″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Glencoe Municipal Airport and within 2.5 miles each side of the Glencoe NDB 136° bearing, extending from the 6.3-mile radius to 7.0 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–496 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–66]

Proposed Modification of Class E Airspace; Adrian, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Adrian, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 121° helicopter point in space approach, has been developed for Bixby Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Adrian, MI, in order to include the point in space approach serving Bixby Hospital Heliport.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7 Rules Docket No. 98–AGL–66, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comment

to Airspace Docket No. 98–AGL–66.'' The postcard will be date/time stamped and returned to the comenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Adrian, MI, to accommodate aircraft executing the proposed GPS SIAP 121° helicopter point in space approach for Bixby Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MI E5 Adrian, MI [Revised]

Adrian, Lenawee County Airport, MI
(Lat. 41°52′10″ N., long. 84°04′29″ W)
Bixby Hospital, MI
Point in Space Coordinates
(Lat. 41°55′03″ N., long. 84°03′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Lenawee County Airport, and within a 6.0-mile radius of the Point in Space serving Bixby Hospital.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–495 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–65]

Proposed Establishment of Class E Airspace; Steubenville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Steubenville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 14, and a GPS SIAP to Rwy 32, have been developed for Jefferson County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to create controlled airspace at Jefferson County Airport to accommodate the approaches.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–95, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–65.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Steubenville, OH, to accommodate aircraft executing the proposed GPS Rwy 14 SIAP, and GPS Rwy 32 SIAP, at Jefferson County Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriated aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Steubenville, OH [New]

Steubenville, Jefferson County Airport, OH
(Lat. 40° 21′ 34″ N., long. 80° 42′ 00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Jefferson County Airport, excluding that airspace within the Wheeling, WV, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 24, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–494 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Representations and Disclosures Required by Certain IBs, CPOs and CTAs

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to adopt certain amendments to Commission Rules 30.5 and 30.6.[1] The proposed amendments will revise the procedure by which persons may obtain an exemption from registration under Rule 30.5 and will require CPOs and CTAs to provide U.S. customers with certain disclosures, regardless of whether they are trading on United States markets or foreign markets.

DATES: Comments must be received by March 12, 1999.

ADDRESSES: Interested person should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20481. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–552, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Commission Rules 30.5 and 30.6.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Leanna L. Morris, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background—Current State of the Rules

In 1987, the Commission adopted a new part 30 to its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered

[1] Commission rules referred to herein are found at 17 CFR Ch. I 1998).

into or on subject to the rules of a foreign board of trade.[2] These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act (''Act''), which vest the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

Part 30 sets forth regulations governing foreign futures [3] and foreign option [4] transactions executed on behalf of foreign futures or foreign options customers.[5] For example, Rule 30.4 requires any person engaged in the activities of a futures commission merchant (''FCM''), introducting broker (''IB''), commodity pool operator (''CPO'') and commodity trading advisor (''CTA''), as those activities are defined within the rule, to register with the Commission unless such persons claims relief from registration under part 30. The transactions which are subject to regulation and require registration under part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract; acceptance of money, securities or property to margin, guarantee or secure any foreign futures of foreign option trades or contracts; and any agreement to direct or to guide U.S. customer accounts.[6]

The part 30 rules allow certain persons located outside the United States to obtain as exemption from registration and certain other requirements. Commission Rule 30.5 provide that any person located outside of the United States, its territories or possessions who is required to be registered with the Commission, other than a person required to be registered as an FCM—i.e., an IB, CPO or CTA—will be exempt from such registration requirement, provided he or she appoints an agent for service for process in accordance with paragraph (a) of the rule. Rule 30.5(a) provides that any person claiming an exemption under the rule must enter into a written agency agreement with the FCM through which business is done in accordance with the provisions of Rule 3.3(b), with any registered futures association or any other person located in the United States in the business of providing agency services. The agency agreement authorizes such FCM or other person to serve as the agent for the Rule 30.5 exempt firm for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer.[7]

All persons who are required to be registered under Rule 30.4, including persons who are exempt under Rule 30.5, must comply with the disclosure requirements of Rule 30.6.[8] Rule 30.6(a) states that an IB claiming exemption under Rule 30.5 must provide foreign futures or options customers with the Risk Disclosure Statement required by Commission Rule 1.55. CPOs and CTAs claiming exemption under Rule 30.5 must, pursuant to Rule 30.6(b), provide the Risk Disclosure Statement set forth in Rule 4.24(b) in the case of CPOs, or Rule 4.34(b) in the case of CTAs.

II. Proposed Amendments

The Commission has re-evaluated the provisions of part 30 in light of the changes in the futures and option industry since 1987 and its experience with implementing part 30. As the Commission noted in its adoption of part 30, ''the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex.'' [9] With the advances in technology and accessibility to futures and option markets around the world, the Commission believes that it is appropriate to amend provisions of part 30 at this time to further the regulatory goals of customer protection and to continue the Commission's efforts to update and to modernize its regulations. Specifically, the Commission proposes amendment Rule 30.5 to clarify which customers Rule 30.5 exempt persons may solicit and from whom they may accept orders, to specify who may serve as an agent for service of process, to clarify who may carry the customer accounts of Rule 30.5 firms, and to require that applicants for a Rule 30.5 exemption make certain representations in order to obtain the exemption. The Commission also proposes amendment Rule 30.6 to ensure that U.S. customers receive appropriate disclosures concerning their investments in foreign futures and foreign option contracts.

The proposed amendments will not be retroactive, but will apply to all regulated activities with all new foreign futures and foreign options customers as of the effective date of the new rules. Thus, an IB, CPO or CTA currently exempt under Rule 30.5 will not be required to file a new Rule 30.5 petition for exemption. However, a CPO or CTA currently exempt under Rule 30.5 will be required to provide all new prospective pool participants or new prospective customers with a disclosure document or risk disclosure statement, whichever applies, in accordance with Rule 30.6. The Commission also invites comment on whether currently exempt Rule 30.5 CPOs and CTAs should be required to make the disclosure document available for currently existing participants and customers.

Further, these proposed rule amendments do not alter any existing regulatory obligations to the Securities and Exchange Commission or state securities administrators.

The Commission seeks comments on the following proposed amendments at this time and invites comment regarding any other amendments to these rules that may be necessary in light of industry developments during the past decade.

A. Rule 30.5

As noted above, an exemption from registration pursuant to Rule 30.5 currently is effective when a person enters into a written agency agreement with any of the enumerated persons or entities provided for by the rule and files the agreement with National Futures Association (''NFA''). In practice, few individuals or firms have chosen to obtain an exemption under Rule 30.5. CPOs and CTAs who have obtained a Rule 30.5 exemption were requested by Commission staff to make certain representations, including the representation that they would solicit only qualified eligible participants (''QEPs'') and qualified eligible clients (''QECs''), as those terms are defined in Rule 4.7. Pursuant to the Commission's

[2] 52 FR 28980 (August 5, 1987).

[3] ''Foreign futures'' as defined in part 30 means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Commission Rule 30.1(a).

[4] ''Foreign option'' as defined in part 30 means ''any transaction or agreement which is or is held out to be of the character of, or it commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid,' 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade.'' Commission Rule 30.1(b).

[5] Pursuant to Commission Rules 30.1(c), ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures of foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.''

[6] See Commission Rule 30.4.

[7] ''Communications'' includes ''any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document for correspondence relating to any activities of such person subject to regulation under this part.'' Commission Rule 30.5(a).

[8] Person claiming exemption pursuant to Rule 30.5 must also comply with Commission Rules 1.37 and 1.57. Rule 30.5(c).

[9] 52 FR at 28980.

September 11, 1997 delegation order to the NFA,[10] NFA has continued to request these representations from Rule 30.5 firms. Thus, most Rule 30.5 exempt firms have solicited QEPs and QECs, not U.S. ''retail customers,'' defined as U.S. customers that do not meet the definition of a QEP or QEC.

As business continues to become more global and technology facilitates international communication, foreign CPOs and CTAs may wish to do business with not only QEPs and QECs, but U.S. retail customers as well. While the current disclosure requirements of Rule 30.6 do not afford enough protection to U.S. retail customers, the amendments to the disclosure requirements under Rule 30.6 proposed herein eliminate the need to restrict Rule 30.5 exemptions to QEPs and QECs. The Commission, therefore, wishes to make clear that exempt IBs, CPOs and CTAs may solicit U.S. customers who are not QEPs and QECs, so long as the exempt persons comply with the other provisions of part 30, as proposed to be amended herein.

In order to determine whether persons qualify for an exemption pursuant to Rule 30.5, the Commission proposes revising the rule to require an applicant to make certain representations to establish that he or she is qualified for the exemption. Paragraph (a) of the rule currently states that in order to be eligible for a Rule 30.5 exemption, the applicant must be a non-domestic person soliciting U.S. customers to trade in foreign futures and foreign option contracts and must designate an agent for service of process in the United States. Under proposed Rule 30.5(e), a Rule 30.5 exemption will no longer be self-effectuating—all petitions will be granted or denied based upon the information filed by the applicant with NFA, including the agent for service of process agreement required under Rule 30.5(a). An applicant would be required to show affirmatively that he or she qualifies for an exemption by representing that (i) the applicant is located outside of the United States, its territories or possessions; (ii) the applicant does not trade contracts on behalf of any U.S. customer on any market regulated by the Commission; and (iii) the applicant irrevocably consents to jurisdiction in the United States with respect to transactions subject to part 30 of the regulations promulgated under the Commodity Exchange Act.[11] To ensure the fitness of applicants who conduct business with U.S. customers, the applicant also must represent that he or she would not be statutorily disqualified from registration under section 8a(2) or 8a(3) of the Act and has not been and would not be disqualified from registration or licensing by the home country regulator. If the applicant or its activities are regulated by any government entity or self-regulatory organization, the name and address of such government entity or self-regulatory organization must be provided. In addition, the applicant must specify whether he or she is applying for an exemption based on activities as an IB, CPO or CTA and provide the name, address and telephone number of the main business. Finally, the petition must be in writing and signed as follows: if the IB, CPO or CTA is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person with legal authority to bind the corporation. The Commission recognizes that, due to potential differences in business structures in certain foreign jurisdictions, the above qualified signatories may be too restrictive. Thus, the Commission seeks comment on how the rule might otherwise be written to recognize an appropriate signatory for a Rule 30.5 petition.

In the proposed amendments, the Commission also wishes to clarify who may carry foreign futures and foreign options customers' accounts in connection with solicitation by and acceptance of orders by persons who have obtained an exemption under Rule 30.5. The Division of Trading and Markets (''Division'') has interpreted Rule 30.5 to permit an exempt IB, CPO or CTA to carry customer accounts with a registered futures commission merchant or with a foreign broker who has received confirmation of Rule 30.10 relief on a fully-disclosed basis as required by Rule 30.3(b).[12] Persons exempt under Rule 30.5 have been permitted to conduct business through Rule 30.10 exempt firms because such firms, in order to receive confirmation of Rule 30.10 relief, have represented to the Commission that they will provide access to the firm's books and records related to transactions under part 30 and adequate arrangements exist with these firms and their regulator(s) to share information, including firm-specific and transaction-specific information. The Commission wishes to codify the policy set forth in Interpretative Letter 89–3. Thus, the proposed rule states specifically that persons exempt under Rule 30.5 must use either U.S. registered futures commission merchants or foreign brokers who have received confirmation of Rule 30.10 relief to carry foreign futures or foreign options customer accounts. Rule 30.5 exempt persons are not permitted to use foreign brokers who have not received confirmation of Rule 30.10 relief to carry foreign futures or foreign options customer accounts, nor have they been permitted to do so in the past.

The proposed rule also clarifies that, although Rule 30.5 exempt persons may use Rule 30.10 firms to carry U.S. customer accounts, they may not designate such firms as their agent for service of process under Rule 30.5(a), since such firms are not located in the United States. The purpose of requiring designations of an agent for service of process is to make communications with foreign persons or entities easier by designating a recipient in the United States. Rule 30.5, as currently written might have caused people to believe that Rule 30.10 firms could act as an agent for service of process because the rule states that an agency agreement may be entered into with ''the futures commission merchant through which business is done in accordance with the provisions of § 30.3(b) of this part * * *'' Rule 30.3(b) provides that, ''except as otherwise provided in § 30.4 of this part or pursuant to an exemption granted under § 30.10 of this part,'' the offer and sale of foreign futures and foreign option contract on behalf of U.S. customers must be by or through a registered FCM. Thus, Rule 30.5 could be read to mean that a Rule 30.10 exempt firm could act as an agent for service of process. The intent behind Rule 30.5, however, was to allow registered FCMs or other appropriate persons located in the United States to act as an agent for service of process. Thus, the proposed rule clarifies that a Rule 30.5 exempt person must designate either a U.S. futures commission merchant through which business is done, a registered futures association or any other person located in the United States in the business of providing services as an agent for service of process to act as the agent for service of process in accordance with Rule 30.5(a).

B. Rule 30.6

The Commission believes that U.S. customers who trade foreign futures and foreign options should receive disclosures similar to those provided to

[10] 62 FR 47792 (September 11, 1997).

[11] These representations are consistent with the representations required of foreign firms claiming exemption from registration pursuant to Commission Rule 30.10. (*See* Commission Rule 30.10, Appendix A-Part 30, Interpretative Statement with Respect to the Commission's Exemptive Authority under § 30.10 of its rules).

[12] CFTC Interpretative Letter No. 89–3 (1989 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶24,416 (April 4, 1989).

U.S. customers who trade on domestic markets. Currently, IBs and FCMs, whether registered or exempt from registration, are required to provide the same disclosures to U.S. customers, regardless of whether the customer is trading on domestic or foreign markets.[13] There are, however, disparate disclosure requirements for domestic and foreign trading solicited by CPOs and CTAs, as explained below.

Rules 4.21 and 4.31 require registered CPOs and CTAs trading on U.S. contract markets to provide prospective customers or participants with a Disclosure Document containing the information set forth in Rule 4.24 for CPOs and Rule 4.34 for CTAs. The Disclosure Document includes, among other things, information concerning business background, fees past performance and material litigation. CPOs and CTAs who solicit sophisticated and institutional investors who meet the definition of a QEP or QEC pursuant to Rule 4.7, however, are exempt from the Disclosure Document requirements of Rules 4.21, 4.24, 4.25, 4.26, 4.31, 4.34, 4.35 and 4.36.[14] They need only provide QEPs and QECs with the statement prescribed in Rule 4.7(a)(2)(i)(A) for CPOs and Rule 4.7(b)(2)(i)(A) for CTAs, which explains that an offering memorandum is not required to be filed with and has not been reviewed by the Commission pursuant to an exemption.

Part 30, specifically Rule 30.6(b), governs the disclosure requirements for CPOs and CTAs who invest in foreign futures or foreign option contracts on behalf of U.S. customers. It does not distinguish between retail customers and sophisticated customers because the QEP and QEC categorization was not established until the development of Rule 4.7 in 1992. Rule 30.6(b) currently requires all CPOs and CTAs registered or required to be registered under part 30, including those exempt from registration pursuant to Rule 30.5, to provide prospective participants or clients with only the Risk Disclosure Statement prescribed by Rule 4.24(b) for CPOs or Rule 4.34(b) for CTAs. In contrast, CPOs and CTAs who solicit or accept orders from U.S. customers for trading on U.S. markets are required to provide the extensive firm-specific information contained in a Disclosure Document required by part 4 of the regulations. Thus, U.S. retail customers who trade on U.S. markets receive more extensive disclosures than do U.S. retail customers who trade only foreign futures and foreign option contracts.

1. U.S. Retail Investors

To ensure adequate risk disclosures are provided to all U.S. investors trading in foreign futures and option contracts, the Commission proposes amending Rule 30.6(b) to provide that CPOs or CTAs registered or required to be registered under part 30, including those exempt from registration pursuant to Rule 30.5, may solicit or accept order from U.S. retail customers for trading in foreign futures or foreign option contracts only if the CPO or CTA first provides each prospective participant or prospective client with the Disclosure Document required by Rule 4.21 for CPOs and Rule 4.31 for CTAs, containing the disclosures required by Rules 4.24 and 4.34, respectively. These Disclosure Documents should be filed in compliance with Rule 4.26 for CPOs and Rule 4.36 for CTAs.[15] By this amendment, U.S. retail customers will receive similar disclosures whether they trade on domestic or foreign markets.

2. U.S. QEP and QEC Customers

As discussed above, Rule 30.6 currently requires CPOs and CTAs to provide the entire Risk Disclosure Statement of Rule 4.24(b) for CPOs and Rule 4.34(b) for CTAs to all customers, including QEPs and QECs. In contrast, Rule 4.7 does not require CPOs and CTAs to provide QEPs and QECs who trade in U.S. markets with the Risk Disclosure Statement of Rules 4.24(b) and 4.34(b). It only requires CPOs and CTAs to give QEPs and QECs the limited notices in Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively. To make the disclosures to QEPs and QECs more uniform, whether they invest in U.S. markets or foreign markets, the Commission proposes amending Rule 30.6 as follows.

As proposed, Rule 30.6 would require CPOs and CTAs to provide QEPs and QECs with only the risk disclosures contained in Rules 4.24(b)(2) and 4.34(b)(2), respectively, which are the disclosures that specifically address the risks of trading in foreign futures and foreign options. CPOs and CTAs would no longer provide the entire Risk Disclosure Statement.[16] In addition, CPOs and CTAs who solicit and accept orders from QEPs and QECs would be required to provide foreign futures and foreign options customers with the statements in Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively.

Thus, the net effect of these amendments is that CPOs and CTAs who solicit foreign futures and options customers who are QEPs and QECs will be required to provide slightly more disclosure than they do to QEPs and QECs who trade on domestic markets, but will be allowed to disclose less than Rule 30.6 currently requires.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small business. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[17] The Commission previously has determined that CPOs are not small entities for the purpose of the RFA.[18] With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.[19] In this regard, the Commission notes that the regulations being proposed herein with respect to CTAs' and IBs' activities relating to foreign futures and foreign option contracts are essentially the same as those governing CTAs and IBs in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. The Commission has

[13] Pursuant to Rule 30.5(c), exempt IBs must comply with Rule 30.6. Rule 30.6(a) requires FCMs and IBs to provide foreign futures and foreign options customers with the Risk Disclosure Statement prescribed by Rule 1.55(b)—the same disclosure required of registered FCMs and IBs trading in domestic markets.

[14] As provided in the final rulemaking of Rule 4.7, QEPs and QECs are deemed to be sophisticated investors that possess ''either the investment expertise and experience necessary to understand the risks involved, * * * or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investment'' and, therefore, require fewer disclosure protections than retail customers. 57 FR 34853, at 34854 (August 7, 1992).

[15] If this provision were to be adopted, it would be necessary for the Commission to issue an order delegating to NFA the function of reviewing Disclosure Documents filed pursuant to Rule 30.6.

[16] CPOs and CTAs who solicit only QEPs and QECs for trading on domestic markets presently are not required by Part 4 to provide the Risk Disclosure Statements in Rules 4.24 and 4.34. The Commission believes that the specific risk disclosure statements in Rules 4.24(b)(2) and 4.34(b)(2) should be provided to all U.S. customers solicited to trade foreign futures and foreign options, including QEPs and QECs, due to the difference in regulatory protections available when trading on foreign exchanges.

[17] 47 FR 18618–18621 (April 30, 1982).

[18] 47 FR 18619–18620.

[19] 47 FR 18618–18620.

previously determined that the disclosure requirements governing these categories of registrant will not have a significant economic impact on a substantial number of small entities.[20] In fact, Rule 4.31, which governs the disclosure requirements for CTAs, was revised in 1995 for the purpose of reducing the number of disclosures required and focusing on succinct disclosure of material information. The Commission determined that the revised rule reduced rather than increased the requirements of former Rule 4.31. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

When publishing proposed rule, the Paperwork Reduction Act of 1995[21] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (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 the 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.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with the entire new collection 3038–0023, of which these proposed rules are a part, is as follows:

Average burden hours per response.	16.13.
Number of respondents	73,435.
Frequency of response	On occasion.

The burden associated with these specific proposed rules is as follows:

Rule 30.5—	
Average burden hours per response.	1.00.
Number of Respondents	65.
Frequency of response	On occasion.
Rule 30.6(b)(1)—	
Average burden hours per response.	.5.
Number of Respondents	40.
Frequency of response	On occasion.
Rule 30.6(b)(2)—	
Average burden hours per response.	3.0.
Number of Respondents	5.
Frequency of response	On occasion.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements, Reporting and recordkeeping requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

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

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.5 is proposed to be amended by adding introductory text, revising paragraph (a) and adding paragraph (e) to read as follows:

§ 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing a petition for exemption with the National Futures Association and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must carry any accounts for or on behalf of any foreign futures or foreign options customer with a registered futures commission merchant or with a foreign broker who has received confirmation of an exemption pursuant to § 30.10 of this part in accordance with the provisions of § 30.3(b) of this part.

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 of this part with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term

[20] See 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

[21] Pub. L. 104–13 (May 13, 1995).

''communication'' includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

* * * * *

(e) *Petition for exemption.* Any person seeking an exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor under this section file a petition for exemption, which will be granted or denied based on compliance with § 30.5(a) and the provisions of this paragraph. The petition must:

(1) Be in writing;

(2) Provide the name, main business address and main business telephone number of the applicant;

(3) Represent that: (i) The applicant is located outside of the United States, its territories or possessions;

(ii) The applicant does not trade contracts on behalf of any U.S. person on any market regulated by the Commission; and

(iii) The applicant irrevocably agrees to jurisdiction of the Commission and state and federal courts in the United States with respect to activities and transactions subject to this part;

(4) Represent that the applicant would not be statutorily disqualified from registration under section 8a(2) or 8a(3) of the Commodity Exchange Act and that the applicant is not disqualified from registration pursuant to the laws or regulations of its home country;

(5) If the applicant or its activities are regulated by any government entity or self-regulatory organization, state the name and address of such government entity or self-regulatory organization;

(6) State whether the applicant is applying for a § 30.5 exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor;

(7) Be signed as follows: If the applicant is sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person legally authorized to bind the corporation; and

(8) Be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association.

* * * * *

3. Section 30.6 is proposed to be amended by revising paragraph (b) to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective qualified eligible participant in a foreign commodity pool that it operates or that it intends to operate, unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible participant with the Risk Disclosure Statement set forth in § 4.24(b)(2) and the statement in § 4.7(a)(2)(i)(A). With respect to qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not solicit or enter into an agreement with a prospective qualified eligible client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in such activities, first provides each qualified eligible client with the Risk Disclosure Statement set forth in § 4.34(b)(2) and the statement in § 4.7(b)(2)(i)(A).

(2) With respect to participants who do not satisfy the requirements of qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate, unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter. With respect to clients who do not satisfy the requirements of qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

* * * * *

Dated: January 4, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–375 Filed 1–8–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106905–98]

RIN 1545–AW09

Allocation of Loss With Respect to Stock and Other Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation of loss recognized on the disposition of stock and other personal property. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance. Prior proposed regulations are withdrawn. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by May 5, 1999. Outlines of oral comments to be discussed at the public hearing scheduled for May 26, 1999, must be received by May 5, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–106905–98), 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–106905–98), 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 in general, Seth B. Goldstein of the Office of Associate Chief Counsel (International), (202) 622–3810; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published elsewhere in this issue of the **Federal Register** provide guidance concerning the allocation of loss with respect to personal property. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations. Proposed § 1.865–1, published on July 8, 1996 (REG–209750–95, formerly INTL–4–95 (1996–2 C.B. 484), 61 FR 35696), is withdrawn.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. 603. A summary of the analysis is set forth below under the heading ''Summary of Initial Regulatory Flexibility Analysis.'' 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 businesses.

Summary of Initial Regulatory Flexibility Analysis

These proposed regulations under sections 861 and 865 of the Internal Revenue Code address the allocation of loss with respect to personal property and are necessary for the proper computation of the foreign tax credit limitation under section 904 of the Internal Revenue Code. These regulations are promulgated under sections 861, 865(j)(1) and 7805 of the Internal Revenue Code. If adopted, these proposed regulations will affect small entities such as small businesses but not other small entities such as government or tax exempt organizations, which do not pay taxes. The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap or conflict with these regulations. None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of these regulations on small entities. There are no alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute. The IRS and Treasury Department request comments from small entities concerning this analysis.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely to the IRS (a signed original and eight (8) copies). In particular, the IRS requests comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 26, 1999, beginning at 10 a.m. in room 2615 of the 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 who wish to present oral comments at the hearing must submit written 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 May 5, 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 Seth B. Goldstein, of the Office of the Associate Chief Counsel (International), 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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.865–1 also issued under 26 U.S.C. 865. * * *

Par. 2. Section 1.861–8 is amended by revising paragraph (e)(8) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(8) [The text of this proposed paragraph (e)(8) is the same as the text of § 1.861–8T(e)(8) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 3. Section 1.865–1 is added immediately following § 1.864–8T, to read as follows:

§ 1.865–1 Loss with respect to personal property other than stock.

[The text of this proposed § 1.865–1 is the same as the text of § 1.865–1T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.865–2 is amended by adding paragraphs (b)(4)(iii) and (b)(4)(iv) *Example 3* through *Example 6* to read as follows:

§ 1.865–2 Loss with respect to stock.

* * * * *

(b) * * *

(4) * * *

(iii) [The text of this proposed paragraph (b)(4)(iii) is the same as the text of § 1.865–2T(b)(4)(iii) published elsewhere in this issue of the **Federal Register**.]

(iv) * * *

Example 3 through *Example 6* [The text of this proposed paragraph (b)(4)(iv) *Example 3* through *Example 6* is the same as the text of § 1.865–2T(b)(4)(iv) *Example 3* through *Example 6* published elsewhere in this issue of the **Federal Register**.]

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–151 Filed 1–8–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Glacier Bay National Park, Alaska; Commercial Fishing Regulations and Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Public comment period extension for Proposed Rule and Environmental Assessment.

SUMMARY: The National Park Service (NPS) announces that the public comment period for the proposed rule concerning Glacier Bay National Park commercial fishing published on April 16, 1997 (62 FR 18547) and Environmental Assessment (EA) has been extended to February 1, 1999. The public comment period for the proposed rule and EA will end February 1, 1999.

DATES: Comments on the proposed rule and EA will be accepted through February 1, 1999.

ADDRESSES: Comments on the proposed rule and EA should be submitted to the: Superintendent, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Comments on the proposed rule and EA may be made on the park's Web site at *http://www.nps.gov/glba*, or by phoning the park at (907) 697–2230.

FOR FURTHER INFORMATION CONTACT: Copies of the EA and the Executive Summary are available by writing to Glen Yankus, National Park Service Support Office, 2525 Gambell St., Anchorage, Alaska 99503, or calling (907) 257–2645. The EA Executive Summary, Proposed Rule, and Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 are also available on the park's Web site at *http://www.nps.gov/glba*.

Dated: December 28, 1998.

Judy Gottlieb,

Acting Regional Director, Alaska.

[FR Doc. 99–478 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0106b; FRL–6210–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) emissions from the operations of fuel burning equipment, electric power generating equipment, and steam generating equipment within the Mojave Desert Air Quality Management District (MDAQMD).

The intended effect of proposing approval of these revisions is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Written comments must be received by February 10, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns approval of MDAQMD's Rules 474, Fuel Burning Equipment; 475, Electric Power Generating Equipment; 476, Steam Power Generating Equipment; and removal of MDAQMD Rule 68, Fuel Burning Equipment—Oxides of Nitrogen. These rules were submitted by the California Air Resources Board to EPA on March 10, 1998. For further information, please see the information provided in the direct final action that is located in the Rules Section of this **Federal Register**.

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

Dated: December 14, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–81 Filed 1–8–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7275]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being

already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Middletown (City), Middlesex County.	Mattabasset River	Approximately 60 feet downstream of State Route 72.	*24	*23
			At upstream county boundary (approximately 2,590 feet upstream of Industrial Park Road).	*25	*23
		Miner Brook	At confluence with Mattabasset River	*24	*23
			Approximately 50 feet downstream of abandoned railroad.	*24	*23
		Sawmill Brook	At confluence with Mattabasset River	*25	*23
			Approximately 1,530 feet downstream of Aetna Entrance Road.	*25	*24
Maps available for inspection at the Municipal Building, Planning and Zoning Room, 245 DeKoven Drive, Middletown, Connecticut.					
Send comments to The Honorable Domenique S. Thorton, Mayor of the City of Middletown, 245 DeKoven Drive, P.O. Box 1300, Middletown, Connecticut 06457.					
Florida	Apopka (City), Orange County.	Lake Alden	Entire shoreline within community	*70	*68
		Lake Cora	Entire shoreline within community	None	*64
		Upper Lake Doe	Entire shoreline within community	*70	*71
		Lower Lake Doe	Entire shoreline within community	None	*71
		Lake Hiawatha	Entire shoreline within community	None	*74
		Lake Marshall	Entire shoreline within community	*70	*71
		Lake Maynard	Entire shoreline within community	None	*70
		Lake Merril and Wolf Lake	Entire shoreline within community	None	*64
		Lake Pearl No. 1	Entire shoreline within community	None	*70

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Lake Prevatt	Entire shoreline within community	None	*61
		Lake Rutherford	Entire shoreline within community	None	*71
		Lake Standish	Approximately 800 feet southwest of intersection of Ellen Lane and Schopke Lester Road.	None	*68
		Lake Witherington	Entire shoreline within community	None	*68
		Lake Francis	Entire shoreline within community	*68	*65
		Lake Opal	Entire shoreline within community	None	*85
		Lake Carter	Entire shoreline within community	None	*76
		Unnamed Lake 12	Entire shoreline within community	None	*70
		Unnamed Lake 13	Entire shoreline within community	None	*70
		Lake McCoy	Entire shoreline within community	*65	*67
		Border Lake	Entire shoreline within community	None	*80
		Dream Lake	Approximately 350 feet northeast of intersection of Lakeside Drive and North Lake Avenue.	None	*117
		Lake Jackson No. 2	Entire shoreline within community	None	*82
		Medicine Lake	Approximately 700 feet southwest of intersection of Ocoee Apopka Road and West Keene Road.	None	*73
	Maps available for inspection at the City Engineer's Office, 120 East Maine Street, Second Floor, Apopka, Florida.				
	Send comments to The Honorable John H. Land, Mayor of the City of Apopka, P.O. Box 1229, Apopka, Florida 32704–1229.				
Florida	Eatonville (Town), Orange County.	Lake Shadow	Approximately 1,000 feet northwest of intersection of West Kennedy Boulevard and South Keller Road.	None	*85
	Maps available for inspection at the Eatonville Town Hall, 307 East Kenney Boulevard, Eatonville, Florida.				
	Send comments to The Honorable Anthony Grant, Mayor of the Town of Eatonville, P.O. Box 2163, Eatonville, Florida 32751.				
Florida	Maitland (City), Orange County.	Lake Maitland	Entire shoreline within community	*68	*70
		Stream A No. 2	Approximately 1,100 feet upstream of Dommerich Drive.	None	*69
			Approximately 1,400 feet upstream of Dommerich Drive.	None	*70
		Lake Minnehaha	Approximately 1,000 feet south of intersection of Mayo Avenue and Silver Palm Lane.	*70	*68
	Maps available for inspection at the Maitland City Hall, Building and Zoning Department, 1776 Independence Lane, Maitland, Florida.				
	Send comments to The Honorable Robert Breaux, Mayor of the City of Maitland, 1776 Independence Lane, Maitland, Florida 32751.				
Florida	Ocoee (City), Orange County.	Tributary to Lake Lotta	At State Highway 50	None	*101
			Approximately 100 feet upstream of South Bluford Avenue.	None	*117
		Lake Addah	Entire shoreline within community	None	*81
		Lake Lotta	Entire shoreline within community	None	*93
		Lake Lilly No. 1	Entire shoreline within community	None	*122
		Lake Pearl No. 3	Entire shoreline within community	None	*122
	Maps available for inspection at the Ocoee City Hall, Building and Zoning Department, 150 North Lakeshore Drive, Ocoee, Florida.				
	Send comments to The Honorable S. Scott Vandergrift, Mayor of the City of Ocoee, 150 North Lakeshore Drive, Ocoee, Florida 34761.				
Florida	Orange County (Unincorporated Areas).	Lake Addah	Entire shoreline within community	None	*81
		Lake Alma	Entire shoreline within community	None	*77
		Lake Alpharetta	Entire shoreline within community	None	*74
		Lake Arlie	Entire shoreline within community	None	*76
		Lake Austin	Entire shoreline within community	None	*114
		Lake Avalon	Entire shoreline within community	None	*99
		Lake Bartho	Entire shoreline within community	None	*56
		Border Lake	Entire shoreline within community	None	*80
		Lake Buchanan	Entire shoreline within community	None	*95
		Buck Lake	Entire shoreline within community	None	*80
		Lake Buynak	Entire shoreline within community	None	*114
		Lake Carter	Approximately 1,000 feet southeast of Ocoee Apopka Road and West Keene Road.	None	*76
		Club Lake	Entire shoreline within community	None	*61

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Corner Lake	Entire shoreline within community	None	*64
		Lake Cortez	Entire shoreline within community	None	*69
		Lake Crescent	Entire shoreline within community	None	*105
		Downey Lake	Entire shoreline within community	None	*73
		Lake Drawdy	Entire shoreline within community	None	*59
		Dwarf Lake	Entire shoreline within community	None	*77
		Lake Ellenore	Entire shoreline within community	None	*98
		Lake Eve	Entire shoreline within community	None	*106
		Lake Fredrica	Entire shoreline within community	None	*100
		Lake Gem Mary	Entire shoreline within community	None	*93
		Lake Gigi	Entire shoreline within community	None	*90
		Grass Lake	Entire shoreline within community	None	*114
		Heiniger Lake	Entire shoreline within community	None	*72
		Lake Heney	Entire shoreline within community	None	*105
		Lake Hiawassee	Entire shoreline within community	*83	*84
		Hickory Nut Lake	Entire shoreline within community	None	*106
		Lake Herrick	Entire shoreline within community	*82	*83
		Lake Geyer	Entire shoreline within community	*83	*84
		Holts Lake	Entire shoreline within community	None	*106
		Lake Lerla	Entire shoreline within community	None	*67
		Lake Lilly No. 1	Entire shoreline within community	None	*122
		Lake Lotta	Entire shoreline within community	None	*93
		Lake Louise No. 2	Entire shoreline within community	None	*63
		Lake Lucie	Entire shoreline within community	None	*64
		Lake Lucy	Entire shoreline within community	None	*73
		Lake Luzom	Entire shoreline within community	None	*112
		Lake Mac	Entire shoreline within community	None	*114
		Lake Maggiore	Entire shoreline within community	None	*88
		Lake Minore	Entire shoreline within community	None	*88
		Lake Marden	Entire shoreline within community	None	*79
		Marshall Lake	Entire shoreline within community	*70	*71
		Lake Maynard	Approximately 1,000 feet north of intersection of Marden Road and West Keene Road.	None	*70
		Lake McCoy	Entire shoreline within community	*65	*67
		Medicine Lake	Entire shoreline within community	None	*73
		Lake Merril	Approximately 1,000 feet east of intersection of West Ponkan Road and Ponkan Pines Road.	None	*64
		Mudd Lake	Entire shoreline within community	None	*114
		Lake Nan	Entire shoreline within community	None	*67
		Lake Needham	Entire shoreline within community	None	*108
		Neighborhood Lakes	Entire shoreline within community	None	*62
		Lake Oliver	Entire shoreline within community	None	*114
		Lake Opal	Entire shoreline within community	None	*85
		Lake Paxton	Entire shoreline within community	None	*50
		Lake Pearl No. 2	Entire shoreline within community	None	*56
		Lake Pearl No. 3	Entire shoreline within community	None	*122
		Lake Pickett	Entire shoreline within community	None	*59
		Lake Pinto	Entire shoreline within community	None	*84
		Lake Prevatt	Entire shoreline within community	None	*61
		Red Lake	Entire shoreline within community	None	*80
		Lake Rhea	Entire shoreline within community	None	*118
		Lake Rose	Entire shoreline within community	*89	*90
		Lake Rouse	Entire shoreline within community	None	*70
		Lake Rutherford	Entire shoreline within community	None	*71
		Lake Semmes	Entire shoreline within community	None	*72
		Lake Sentinel	Entire shoreline within community	None	*112
		Sheppard Lake	Entire shoreline within community	None	*72
		Lake Small	Entire shoreline within community	None	*79
		Lake Standish	Entire shoreline within community	None	*68
		Lake Star	Entire shoreline within community	None	*112
		Lake Tanner	Entire shoreline within community	None	*50
		Lake Tiny	Entire shoreline within community	None	*76
		Tub Lake	Entire shoreline within community	None	*96
		Sandy Lake	Entire shoreline within community	None	*100
		Unnamed Lake A	Entire shoreline within community	None	*108
		Unnamed Lake B	Entire shoreline within community	None	*108
		Lake Tyler	Entire shoreline within community	None	*95
		Steer Lake	Entire shoreline within community	*88	*89

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Unnamed Lake C	Entire shoreline within community	None	*108
		Unnamed Lake D	Entire shoreline within community	None	*106
		Unnamed Lake E	Entire shoreline within community	None	*106
		Unnamed Lake F	Entire shoreline within community	None	*106
		Unnamed Lake G	Entire shoreline within community	None	*106
		Unnamed Lake H	Entire shoreline within community	None	*106
		Unnamed Lake I	Entire shoreline within community	None	*106
		Unnamed Lake J	Entire shoreline within community	None	*107
		Unnamed Lake K	Entire shoreline within community	None	*107
		Lake Whitney	Entire shoreline within community.		
		Pond C (Tributary to Apopka).	Entire shoreline within community	*69	*70
		Pond B (Tributary to Apopka).	Entire shoreline within community	None	*70
		Pond A (Tributary to Apopka).	Entire shoreline within community	None	*70
		Dream Lake	Entire shoreline within community	None	*117
		Unnamed Lake 13	Entire shoreline within community	None	*70
		Unnamed Lake 12	Entire shoreline within community	None	*70
		Unnamed Lake 17	Entire shoreline within community	None	*70
		Unnamed Lake 14	Entire shoreline within community	None	*109
		Unnamed Lake 14	Entire shoreline within community	None	*106
		Unnamed Lake 15	Entire shoreline within community	None	*106
		Lake Olivia-East	Entire shoreline within community	None	*99
		Hart Branch	Approximately 2,700 feet upstream of confluence with Lake Hart.	*64	*65
			Approximately 1 mile upstream from OUC railroad bridge.	None	*82
		Myrtle Bay	Approximately 650 feet upstream of confluence with Lake Hart.	*64	*65
			At Narcoosee Road	None	*80
		Tributary to Lake Lotta	At State Highway 50	None	*101
			Approximately 1,000 feet upstream of Chicago Avenue.	None	*107
		East Tributary to Econlockhatchee River.	At Seminole Trail	*48	*49
			Approximately 150 feet upstream of Old Cheney Highway.	None	*65
		West Tributary to Econlockhatchee River.	Approximately 1,900 feet upstream of confluence with Econlockhatchee River.	None	*42
			Approximately 250 feet upstream of State Highway 50.	None	*52
		Shingle Creek	Approximately 2,000 feet upstream of downstream county boundary.	*78	*77
			Approximately 1,400 feet upstream of West Oak Ridge Road.	*95	*93
		Howell Creek	Approximately 800 feet east of Cove Colony Road and North Thistle Lane intersection.	None	*67
			Approximately 650 feet north of Temple Trail and Cove Trail intersection.	None	*67
		Lake Gear	Approximately 200 feet west of intersection of Maltby Avenue and Daubert Street.	None	*112
		Rio Pinar Canal	Approximately 650 feet upstream of confluence with Azalea Park Outfall Canla.	None	*79
			Downstream side of Lake Underhill Road	None	*82
		Disston Canal	At confluence with Lake Mary Jane	*66	*64
			At divergence from Econlockhatchee River.	None	*64
		Tributary to Hart Branch	At confluence with Hart Branch	None	*78
			Approximately 0.8 mile upstream of confluence with Hart Branch.	None	*82
		Crowell Lake	Entire shoreline within community	None	*104
		Stream B Swamp	Entire shoreline within community	None	*116
			At confluence with Tributary C	None	*115
			Approximately 450 feet upstream from confluence with Tributary C.	None	*115
		Lake Olivia	Entire shoreline within community	None	*98
		Little Lake Bryan	Entire shoreline within community	None	*101

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Upper Lake Doe	Entire shoreline within community	*70	*71
		Lake Bryan	Approximately 400 feet southeast of intersection of Vista Lake Lane and Lake Vining Drive.	None	*100
	Lake Catherine No. 1	Approximately 1,000 feet northwest of intersection of Castle Palm Road and South Texas Avenue.	None	*94	
		Lake Mann	Approximately 200 feet north of intersection of Lenox Boulevard and Florence Avenue.	None	*95
Maps available for inspection at the Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida.					
Send comments to M. Krishnamurthy, Ph.D., P.E., Manager, Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32829–9205.					
Florida	Orlando (City), Orange County.	Lake Dover	Entire shoreline within community	None	*111
		Lake Gem Mary	Entire shoreline within community	None	*93
		East Orlando Outfall Canal.	Approximately 650 feet upstream of Wild Horse Road.	None	*95
		At South Semoran Boulevard.	None	*96	
		Lake Corrine	At Truman Road	None	*92
		Outfall Canal	Downstream side of Japonica Street	*95	*93
		Lake Fredrica	Entire shoreline within community	None	*100
		Lake Gear	Entire shoreline within community	None	*112
		Lake Nona	Entire shoreline within community	None	*80
		Mud Lake	Entire shoreline within community	*75	*76
		Lake Pamela	Entire shoreline within community	None	*113
		Sandy Lake	Entire shoreline within community	None	*100
		Bay Lake	Entire shoreline within community	*92	*93
		Lake Shannon	Entire shoreline within community	None	*113
		Red Lake	Entire shoreline within community	None	*80
		Buck Lake	Entire shoreline within community	None	*80
		Lake Hiawassee	Entire shoreline within community	*83	*84
		Lake Warren No. 1	Entire shoreline within community	None	*90
		Lake Fran	Entire shoreline within community	*98	*96
		Shingle Creek	At Raleigh Street	*98	*97
		xl	At downstream corporate limit	*95	*93
Maps available for inspection at the City of Orlando Permitting Services, 400 South Orange Avenue, Orlando, Florida.					
Send comments to The Honorable Glenda Hood, Mayor of the City of Orlando, 400 South Orange Avenue, Orlando, Florida 32801.					
Florida	Winter Garden (City), Orange County.	Winter Garden Co-op Ditch.	Approximately 1,800 feet downstream of CSX Transportation.	None	*82
			Approximately 800 feet downstream of CSX Transportation.	None	*87
Maps available for inspection at the Winter Garden City Hall, 251 West Plant Street, Winter Garden, Florida.					
Send comments to The Honorable Jack Quesinberry, Mayor of the City of Winter Garden, 251 West Plant Street, Winter Garden, Florida 34787.					
Florida	Winter Park (City), Orange County.	Lake Corrine Outfall Canal	Approximately 100 feet upstream of Semorah Boulevard.	None	*92
			At Truman Road	None	*92
		Lake Maitland	Entire shoreline within community	*68	*70
		Lake Bell	Approximately 1,450 feet northeast of intersection of Lee Road and Beard Avenue.	None	*92
Maps available for inspection at the Winter Park City Hall, Building Department, 401 Park Avenue, South, Winter Park, Florida.					
Send comments to The Honorable Joe Terranova, Mayor of the City of Winter Park, 401 Park Avenue, South, Winter Park, Florida 32789.					
Georgia	Bibb County (Unincorporated Areas).	Tobesofkee Creek Tributary No. 1.	Approximately 2,600 feet upstream of confluence with Tobesofkee Creek.	*306	*305
			Approximately 180 feet upstream of Eisenhower Parkway (U.S. 80).	None	*353

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Bibb County Engineering Office, 780 Third Street, Macon, Georgia.					
Send comments to Mr. Larry Justice, Chairman/Bibb County Board of Commissioners, P.O. Box 4708, Macon, Georgia 31208–4708.					
Georgia	Coweta County (Unincorporated Areas).	White Oak Creek	Downstream side of State Highway 54	None	*770
			Approximately 1,300 feet upstream of Interstate 85.	*881	*882
		Paradise Lakes Branch	At confluence with White Oak Creek	*784	*788
			Approximately 1,050 feet downstream of McGahee Road.	*787	*788
		Chandlers Creek	At confluence with White Oak Creek	*786	*789
			Approximately 0.49 mile upstream of confluence with White Oak Creek.	*788	*789
		Turkey Creek	At confluence with White Oak Creek	*789	*791
			Approximately 70 feet downstream of Southern Railroad.	*790	*791
		Sullivans Lake Branch	At confluence with White Oak Creek	*795	*797
			Approximately 400 feet upstream of confluence with White Oak Creek.	*796	*797
Maps available for inspection at the Coweta County Planning and Zoning Office, 22 East Broad Street, Newnan, Georgia.					
Send comments to Mr. L. Theron Gay, Coweta County Administrator, 22 East Broad Street, Newnan, Georgia 30263.					
Georgia	Gilmer County (Unincorporated Areas).	Briar Creek	At confluence with the Ellijay River	None	*1,348
			Approximately 1.18 miles upstream of Briar Creek Road.	None	*1,389
		Ellijay River	Approximately 1,450 feet upstream of confluence of Ross Creek.	None	*1,314
			Approximately 3.23 miles upstream of confluence of Boardtown Creek.	None	*1,479
Maps available for inspection at the Gilmer County Planning Commission, #1 Westside Square, Ellijay, Georgia.					
Send comments to Mr. Rayburn Smith, Chairman of the Gilmer County Commissioners, #1 Westside Square, Ellijay, Georgia 30540.					
Georgia	Macon (City), Bibb County.	Tobesofkee Creek Tributary No. 1.	Approximately 625 feet downstream of Interstate 80.	*345	*346
			Approximately 600 feet downstream of Interstate 80.	*345	*346
Maps available for inspection at the Macon City Hall, 700 Poplar Street, Macon, Georgia.					
Send comments to The Honorable Jim Marshall, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31202.					
Maryland	Aberdeen (City), Harford County.	Carsins Run	Confluence with Swan Creek	*141	*140
			Just downstream of Interstate 95	*180	*176
		Swan Creek	A point approximately 1.06 miles downstream of North Post Road.	*12	*13
			A point approximately 160 feet downstream of centerline of Interstate 95.	*171	*173
		Tributary 4 to Swan Creek	Approximately 2,625 feet downstream of Aberdeen Thruway.	None	*60
			A point approximately 500 feet upstream of Paradise Road.	None	*121
		Tributary 3 to Swan Creek	Approximately 180 feet downstream of Old Robin Hood Road.	*155	*156
			Just downstream of Old Robin Hood Road.	*155	*162
Maps available for inspection at the City of Aberdeen Planning Department, 3 West Bel Air Avenue, Aberdeen, Maryland.					
Send comments to The Honorable Doug Wilson, Mayor of the City of Aberdeen, P.O. Box 70, Aberdeen, Maryland 21001.					
Maryland	Bel Air (Town), Harford County.	Plumtree Run	At corporate limits, approximately 2,575 feet downstream of Route 24.	*292	*289
			Approximately 240 feet upstream of Thomas Street.	*353	*352
		Bynum Run	Approximately 750 feet upstream of Brierhill Drive.	*257	*258
			Approximately 1,630 feet upstream of North Hickory Avenue.	*338	*339

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town of Bel Air Public Works and Planning Department, 705 Churchville Road, Bel Air, Maryland. Send comments to Mr. William McFaul, Bel Air Town Administrator, 39 Hickory Avenue, Bel Air, Maryland 21014.					
Maryland	Harford County (Unincorporated Areas).	Bear Cabin Branch	Confluence with Winters Run	*263	*259
			Approximately 1.4 miles upstream of Bernadette Drive.	None	*397
		Bread and Cheese Branch	Confluence with Winters Run	*290	*289
			At a point approximately 1,200 feet upstream of Ryan Road.	*371	*373
		Broad Run	Confluence with James Run	None	*214
			Approximately 1,320 feet upstream of Edwards Lane.	None	*304
		Tributary 1 to Broad Run	At confluence with Broad Run	None	*264
			Approximately 640 feet upstream of Asbury Road.	None	*308
		Tributary 2 to Broad Run	At confluence with Broad Run	None	*296
			Approximately 870 feet upstream of Flint Lock Drive.	None	*358
		Bynum Run	Approximately 260 feet downstream of Philadelphia Road/State Route 7.	*17	*16
			Approximately 0.7 mile upstream of Ma and Pa Railroad.	*439	*438
		Tributary 1 to Bynum Run	Confluence with Bynum Run	*269	*270
			A point approximately 0.6 mile upstream of confluence with Bynum Run.	*293	*292
		Tributary 2 to Bynum Run	Confluence with Tributary 1 to Bynum Run.	*269	*270
			At Southampton Road	*293	*294
		Carsins Run	Just downstream of Interstate 95	*180	*176
			A point approximately 930 feet upstream of Carsins Road.	None	*277
		East Branch	Confluence with Winters Run	*336	*341
			A point approximately 1,150 feet upstream of confluence with Winters Run.	*340	*341
		Grays Run	At CSX Transportation	None	*10
			A point approximately 500 feet upstream of James Run Road.	None	*297
		James Run	Approximately 500 feet upstream of confluence with Bynum Run.	*14	*13
			A point approximately 940 feet upstream of Snake Lane.	None	*265
		Tributary 1 to James Run	Confluence with James Run	None	*61
			A point approximately 1,250 feet upstream of Goat Hill Road.	None	*112
		Long Branch	A point approximately 320 feet upstream of confluence with Winters Run.	*295	*294
			A point approximately 60 feet upstream of Rock Spring Church Road.	*394	*395
		Plumtree Run	Confluence with Winters Run	*138	*126
			A point approximately 160 feet upstream of Thomas Street.	None	*352
		Rocky Branch	Confluence with Wildcat Branch	*297	*296
			Approximately at Harford Road/State Road 147.	*372	*371
		Swan Creek	A point approximately 1.68 miles downstream of North Post Road.	None	*11
			A point approximately 1,200 feet upstream of Aldino Road.	None	*342
		Tributary 1 to Swan Creek	A point approximately 2,050 feet downstream of Oakington road.	None	*11
			A point approximately 1,090 feet upstream of CSX Transportation Railroad.	None	*84
		Tributary 2 to Swan Creek	Confluence with Swan Creek	None	*63
			A point approximately 1,010 feet upstream of Titan Terrace.	None	*131
		Tributary 3 to Swan Creek	Just upstream of Old Robin Hood Road	*156	*162
			A point approximately 620 feet upstream of Gravel Hill Road.	None	*354

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary 4 to Swan Creek	Confluence with Swan Creek	*32	*35
			A point approximately 800 feet upstream of CONRAIL.	None	*62
		West Branch	Confluence with Winters Run	*337	*341
			A point approximately 1,360 feet upstream of confluence with Winters Run.	*340	*341
		Wildcat Branch	A point approximately 350 feet upstream from the confluence with Little Gunpowder River.	None	*199
			Approximately at Bel Air Road	None	*417
		Tributary to Wildcat Branch.	Confluence with Wildcat Branch	*328	*354
			Upstream side of Bel Air Road	*355	None
		Winters Run	Approximately 50 feet downstream of U.S. Route 40.	*15	*16
			Confluence of East Branch and West Branch.	*337	*341
		Tributary 1 to Winters Run	Confluence with Winters Run	*38	*36
			A point approximately 1.0 mile upstream from the confluence of Winters Run.	None	64
		Tributary 2 to Winters Run	Confluence with Winters Run	*26	*24
			At Paul Martin Drive	*42	*40
		Tributary 3 to Winters Run	A point approximately 1.4 miles upstream from the confluence with Winters Run.	*60	*88
			A point approximately 360 feet upstream of State Route 24.	None	*269
		Tributary 4 to Winters Run	Confluence with Winters Run	*131	*124
			A point approximately 0.7 mile upstream from the confluence with Winters Run.	None	*201
		Tributary 5 to Winters Run	Confluence with Winters Run	None	*59
			A point approximately 720 feet upstream of State Route 24.	None	*202
		Tributary 6 to Winters Run	Confluence with Winters Run	None	*51
			Approximately 205 feet upstream of Porter Drive.	None	*163
		Wysong Branch	Confluence with Bynum Run	*324	*323
			Approximately 950 feet upstream of Henderson Road.	*339	*340
		Lilly Run	Just upstream of Revolution Street	None	*42
			Just upstream of CSX Transportation culvert.	None	*75
Maps available for inspection at the Hartford County Planning and Zoning Department, 220 South Main Street-2nd Floor, Bel Air, Maryland. Send comments to Mr. James Harkins, Harford County Executive Officer, 220 South Main Street, Bel Air, Maryland 21014.					
Maryland	Havre de Grace (City), Harford County.	Chesapeake Bay	Corporate limit	None	*14
			A point approximately 500 feet southwest of the intersection of Seneca Avenue and Chesapeake Drive.	*12	*13
		Lilly Run	Downstream of Locust Road	None	*12
			Approximately 200 feet upstream of CSX Transportation culvert.	None	*75
Maps available for inspection at the City of Havre de Grace Planning Department, 711 Pennington Avenue, Havre de Grace, Maryland 21078. Send comments to The Honorable Philip J. Barker, Mayor of the City of Havre de Grace, 711 Pennington Avenue, Havre de Grace, Maryland 21078.					
Massachusetts	Boxborough (Town), Middlesex County.	Beaver Brook	Approximately 530 feet downstream of corporate limits.	None	*227
			Approximately 750 feet upstream of corporate limits.	*228	*227
		Elizabeth Brook	Approximately 330 feet downstream of Boxborough/Harvard corporate limits.	None	*244
			Approximately 1,700 feet upstream of Massachusetts Avenue.	None	*272

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Boxborough Town Hall, 29 Middle Road, Boxborough, Massachusetts Send comments to Mr. Donald Wheeler, Chairman of the Town of Boxborough Board of Selectmen, 29 Middle Road, Boxborough, Massachusetts 01719.					
Michigan	Northville (City), Wayne and Oakland Counties.	Middle River Rouge	Approximately 150 feet upstream of 8 Mile Road.	*819	*804
			Downstream side of Old Novi Road	*822	*824
		Thornton Creek Overflow	At confluence with Middle River Rouge	*821	*823
			Approximately 30 feet upstream of corporate limits.	*822	*823
Maps available for inspection at the Northville City Hall, 215 West Main Street, Northville, Michigan. Send comments to The Honorable Christopher J. Johnson, Mayor of the City of Northville, 215 West Main Street, Northville, Michigan 48167.					
Mississippi	Holmes County, (Unincorporated Areas).	Black Creek (Before Levee Overtopping).	Approximately 1.77 miles downstream of Yazoo Street.	None	*189
			At downstream side of State Route 12	None	*210
		Black Creek (After Levee Overtopping).	Approximately 1,700 feet downstream of State Route 12.	None	*206
			Approximately 200 feet downstream of State Route 12.	None	*209
Maps available for inspection at the Holmes County Courthouse, Court Square, Lexington, Mississippi. Send comments to Mr. Douglas Green, President of the Holmes County Board of Supervisors, P.O. Box 239, Lexington, Mississippi 39095.					
New Hampshire	Woodstock (Town), Grafton County.	East Branch Pemigewasset River.	Approximately 200 feet upstream of confluence with Pemigewasset River.	None	*720
			At upstream corporate limits	None	*758
Maps available for inspection at the Woodstock Town Office, 165 Lost River Road, North Woodstock, New Hampshire. Send comments to Mr. J. Stanton Hilliard, Chairman of the Town of Woodstock Board of Selectmen, Box 156, North Woodstock, New Hampshire 03262.					
New Jersey	Mantoloking (Borough), Ocean County.	Barnegat Bay	Approximately 200 feet east of the intersection of Runyon Lane and Albertson Street.	*9	*6
		Atlantic Ocean	Approximately 450 feet east of the intersection of Herbert Street and Ocean Avenue.	*13	*15
			Approximately 30 feet west of the intersection of Stephens Place and East Avenue.	*10	#1
			Approximately 80 feet east of the intersection of Stephens Place and East Avenue.	*10	*13
Maps available for inspection at the Mantoloking Borough Hall, 202 Downer Avenue, Mantoloking, New Jersey. Send comments to The Honorable Robert A. Roman, Mayor of the Borough of Mantoloking, P.O. Box 247, Mantoloking, New Jersey 08738.					
New York	Chaumont (Village), Jefferson County.	Chaumont River and Chaumont Bay.	Entire shoreline within community	None	*250
		Sawmill Bay	Entire shoreline within community	None	*250
Maps available for inspection at the Village of Chaumont Municipal Building, 27994 Old Town Springs Road, Chaumont, New York. Send comments to The Honorable Mark J. Zegarelli, Mayor of the Village of Chaumont, P.O. Box 297, Chaumont, New York 13622.					
New York	Oswego (City), Oswego County.	Gardenier Creek	Approximately 75 feet downstream of Gardenier Hill Road.	*319	*315
			Approximately 570 feet upstream of Fifth Street.	*327	*324
		Wine Creek	Approximately 30 feet downstream of Penn Central Railroad.	*263	*262
			Approximately 400 feet upstream of East Seneca Street.	*281	*280
Maps available for inspection at the Oswego City Hall, Office of Planning and Zoning, 13 West Oneida Street, Oswego, New York. Send comments to The Honorable Terrance M. Hammill, Mayor of the City of Oswego, Oswego City Hall, 13 West Oneida Street, Oswego, New York 13126.					
New York	Oswego (Town), Oswego County	Gardenier Creek	Upstream corporate limits	None	*317
			Downstream corporate limits	None	*317

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Oswego Town Hall, 2320 County Route 7, Oswego, New York. Send comments to Mr. John Tyrie, Jr., Supervisor of the Town of Oswego, 2320 County Route 7, Oswego, New York 13126.					
New York	Vienna (Town), Oneida County.	Fish Creek	Approximately 8,970 feet downstream of Cook Road.	*376	*377
			Approximately 1.6 miles upstream of Higginsville Road.	*384	*383
Maps available for inspection at the Town of Vienna Planning Board Office, 2091 Route 49, North Bay, New York. Send comments to Mr. Nicholas Lombardo, Supervisor of the Town of Vienna, P.O. Box 250, North Bay, New York 13123.					
New York	Wappinger, (Town) Dutchess County.	Wappinger Creek	Approximately 317 feet downstream of New Hamburg Road Bridge.	*10	*9
			At corporate limits	*125	*123
Maps available for inspection at the Wappinger Town Hall, 20 Middlebush Road, Wappingers Falls, New York. Send comments to Ms. Constance O. Smith, Wappinger Town Supervisor, P.O. Box 324, Wappingers Falls, New York 12590.					
New York	Wappingers Falls, (Village) Dutchess County.	Wappinger Creek	Approximately 50 feet from downstream corporate limits.	*12	*10
			At corporate limits	*95	*91
Maps available for inspection at the Wappingers Falls Zoning Office, 7 Spring Street, Wappingers Falls, New York. Send comments to The Honorable Raymond Belding, Mayor of the Village of Wappingers Falls, 2 South Avenue, Wappingers Falls, New York 12590.					
North Carolina	Ashe County (Unincorporated Areas).	South Fork New River	Approximately 3,000 feet upstream of SR 1100 bridge.	*2,923	*2,922
			At upstream county boundary	*2,949	*2,955
Maps available for inspection at the Old Jefferson School, Building Inspector's Office, 118 William J. B. Blevins Drive, Jefferson, North Carolina. Send comments to Mr. George Yates, Chairman of the Ashe County Commission, P.O. Box 633, Jefferson, North Carolina 28640.					
North Carolina	Burgaw (Town), Pender County.	Burgaw Creek	At downstream side of CSX Transportation.	*35	*36
			At upstream side of West Hayes Street	None	*52
		Osgood Canal	Approximately 800 feet upstream of confluence with Burgaw Creek.	None	*35
			Approximately 50 feet upstream of CSX Transportation.	None	*51
Maps available for inspection at the Town Hall, 109 North Walker Street, Burgaw, North Carolina. Send comments to The Honorable John W. James, Mayor of the Town of Burgaw, P.O. Box 1489, Burgaw, North Carolina 28425.					
North Carolina	Cornelius (Town), Mecklenburg County.	Lake Norman	Entire shoreline within community	None	*761
Maps available for inspection at the Cornelius Town Hall, 21410 Catawba Avenue, Cornelius, North Carolina. Send comments to Mr. Barry Webb, Cornelius Town Manager, P.O. Box 399, Cornelius, North Carolina 28031.					
North Carolina	Davidson (Town), Mecklenburg County.	Lake Norman	Entire shoreline within community	None	*761
Maps available for inspection at the Davidson Town Hall—Planner's Department, 216 South Main Street, Davidson, North Carolina. Send comments to The Honorable Randall Kincaid, Mayor of the Town of Davidson, P.O. Box 579, Davidson, North Carolina 28036.					
Pennsylvania	Chanceford (Township), York County.	Susquehanna River	At upstream corporate limits	*230	*244
			Approximately 2.6 miles upstream from Safe Harbor Dam.	*229	*230
Maps available for inspection at the Chanceford Township Office, Muddy Creek Forks Road, Brogue, Pennsylvania. Send comments to Mr. David Warner, Chairman of the Chanceford Township Board of Supervisors, P.O. Box 115, Chanceford, Pennsylvania 17309.					
Pennsylvania	Columbia (Borough), Lancaster County.	Susquehanna River	At downstream corporate limits	*239	*244
			At upstream corporate limits	*246	*247

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Strickler Run	At confluence of Susquehanna River	*240	*245
			Approximately 100 feet upstream of CONRAIL culvert.	*244	*245
		North Branch Strickler Run.	Approximately 3,500 feet upstream from confluence with Strickler Run.	None	*280
			At upstream corporate limits	None	*290
Maps available for inspection at the Columbia Borough Hall, 308 Locust Street, Columbia, Pennsylvania.					
Send comments to Mr. Tim Swartz, President of the Columbia Borough Council, P.O. Box 509, Columbia, Pennsylvania 17512.					
Pennsylvania	Hellam (Township), York County.	Susquehanna River	At the downstream corporate limits	*239	*245
			Approximately 800 feet upstream of U.S. Route 30.	*246	*247
Maps available for inspection at the Hellam Township Office, 44 Walnut Springs Road, York, Pennsylvania.					
Send comments to Mr. Phil Smith, Chairman of the Hellam Township Board of Supervisors, 44 Walnut Springs Road, York, Pennsylvania 17406–9000.					
Pennsylvania	Kutztown (Borough), Berks County.	Sacony Creek	Approximately 1,800 feet downstream of U.S. Route 222.	None	*399
			Approximately 1,800 feet upstream of Normal Avenue.	*406	*407
Maps available for inspection at the Kutztown Code Office, Municipal Building, 45 Railroad Street, Kutztown, Pennsylvania.					
Send comments to Mr. Eric A. Ely, President of the Kutztown Borough Council, 45 Railroad Street, Kutztown, Pennsylvania 19530.					
Pennsylvania	Lower Windsor (Township), York County.	Susquehanna River	At downstream corporate limits	*230	*244
			At upstream corporate limits	*239	*245
		Canadochly Creek	At the confluence with the Susquehanna River.	*233	*244
			Approximately 1,950 feet upstream of Route 624.	*243	*244
Maps available for inspection at the Lower Windsor Township Municipal Building, 111 Walnut Valley Court, Wrightsville, Pennsylvania.					
Send comments to Mr. Robert A. Blair, Chairman of the Township of Lower Windsor Board of Supervisors, 111 Walnut Valley Court, Wrightsville, Pennsylvania 17368–9003.					
Pennsylvania	Manor (Township), Lancaster County.	Susquehanna River	Approximately 2.7 miles upstream of Safe Harbor Dam.	*229	*230
			Approximately 0.24 mile upstream of corporate limits.	*239	*245
Maps available for inspection at the Manor Township Municipal Building, 950 West Fairway Drive, Lancaster, Pennsylvania.					
Send comments to Mr. Edward C. Goodhart III, Secretary-Treasurer of the Township of Manor, 950 West Fairway Drive, Lancaster, Pennsylvania 17603.					
Pennsylvania	Maxatawny (Township), Berks County.	Sacony Creek	Approximately 1,100 feet downstream of Deturks Bridge.	None	*390
			Approximately 800 feet upstream of Fleetwood Road.	*470	*467
Maps available for inspection at the Township Building, 663 Noble Street, Kutztown, Pennsylvania.					
Send comments to Mr. Carl E. Zettlemoyer, Chairman of the Township of Maxatawny Board of Supervisors, 663 Noble Street, Kutztown, Pennsylvania 19530.					
Pennsylvania	Tunkhannock (Township), Wyoming County.	Tunkhannock Creek	Approximately 900 feet downstream of new U.S. Route 6 and State Route 92.	*610	*611
			Approximately 1.93 miles upstream of old U.S. Route 6.	*641	*642
Maps available for inspection at the Tunkhannock Township Building, 438 SR 92 S, Tunkhannock, Pennsylvania.					
Send comments to Mr. James Cashmark, Chairman of the Township of Tunkhannock Board of Supervisors, 46 Brookside Road, Tunkhannock, Pennsylvania 18657.					
Pennsylvania	Wrightsville (Borough), York County.	Susquehanna River	At downstream corporate limits	*240	*245
			At upstream corporate limits	*243	*247
		Kreutz Creek	At confluence with Susquehanna River	*241	*246

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 180 feet downstream of State Route 624.	*245	*246
Maps available for inspection at the Wrightsville Borough Office, 129 South 2nd Street, Wrightsville, Pennsylvania.					
Send comments to Mr. Walter J. Nace, President of the Wrightsville Borough Council, P.O Box 187, Wrightsville, Pennsylvania 17368.					
South Carolina	Sumter County (Unincorporated Areas).	Long Branch	At U.S. Route 76/378	*173	*174
			To a point approximately 2,890 feet upstream of U.S. Route 76/378.	None	*181
Maps available for inspection at the Planning and Zoning Department, 33 North Main Street, Sumter, South Carolina.					
Send comments to Mr. William T. Noonan, County Administrator, 13 East Canal Street, Sumter, South Carolina 29150.					
West Virginia	Mineral County (Unincorporated Areas).	Cabin Run	Approximately 1,200 feet upstream of confluence with Patterson Creek.	None	*645
			Approximately 1,950 feet upstream of State Route 16.	None	*815
Maps available for inspection at the Mineral County Courthouse, County Planner's Office, 150 Armstrong Street, Keyser, West Virginia.					
Send comments to Mr. Blaire Deremer, President of the Mineral County Commission, Mineral County Courthouse, 150 Armstrong Street, Keyser, West Virginia 26726.					

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

Dated: January 4, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–529 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–1998–4921]

Great Lakes Pilotage Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard's Office of Great Lakes Pilotage is holding a public meeting to discuss options for improving the safety, reliability, and efficiency of the Great Lakes Pilotage System. This meeting is sponsored by both the Coast Guard and the St. Lawrence Seaway Development Corporation as part of the Secretary of Transportation's ONE DOT management strategy for optimizing transportation efficiency and effectiveness. The Coast Guard encourages interested parties to attend the meeting and submit comments for discussion during the meeting. In addition, the Coast Guard seeks written comments from any party who is unable to attend the meeting.

DATES: The meeting will be held on January 28, 1999, from 9 a.m. to 4 p.m. Comments must reach the Docket Management Facility on or before February 12, 1999. This meeting may close early if all business is finished.

ADDRESSES: The public meeting will be held at the Sheraton Airport Hotel at Cleveland Hopkins, Airport, 5300 Riverside Dr., Cleveland, OH 44135. The telephone number is (800) 362–2244. You may mail your comments to the Docket Management Facility [USCG–1998–4921], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, S.W., Washington, DC 20590–0001, or deliver them to room PL–401 on the Plaza Level of the Nassif Building at the same address, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. The telephone number is 202–366–9329

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact John Bennett, Deputy Director, Office of Great Lakes Pilotage, 400 7th Street SW., Suite 5424, Washington, DC 20590, phone (202) 366–8986. For questions on viewing or submitting material to the docket contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments concerning this meeting. Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–4921] and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. John Bennett at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

Under the ONE DOT management strategy, two modal administrations of the Department of Transportation, the Coast Guard and the Saint Lawrence

Seaway Development Corporation (SLSDC), are working together to design a safer, more reliable and efficient pilotage system for the Great Lakes.

On September 25, 1996, the Saint Lawrence Seaway Development Corporation (SLSDC) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 50258) which proposed to increase Great Lakes pilotage rates. In response to the NPRM and subsequent public meeting, the SLSDC received many comments that were beyond the scope of that rulemaking. Many comments recommended changes to the entire system of pilotage on the Great Lakes. These comments are available for public viewing as part of this docket [USCG–1998–4921] at the address listed under **ADDRESSES**.

The current system of pilotage on the Great Lakes was established by the Great Lakes Pilotage Act of 1960 (46 U.S.C. Chapter 93), and is implemented by regulations in 46 CFR parts 401–404. In the 38 years since the Great Lakes pilotage system was established, the pilotage system has remained virtually unchanged, despite the ever-changing Great Lakes maritime industry. Many commenters to the NPRM raised questions concerning the current pilotage system's safety, reliability, and efficiency. These commenters, representing all facets of the maritime industry on the Great Lakes, requested a comprehensive review of this issue.

On March 11, 1997, the SLSDC hosted a public meeting in Cleveland, Ohio to provide a forum for the public to discuss with the SLSDC, and with each other, ideas for improving the safety, reliability, and efficiency of the Great Lakes Pilotage System. The meeting was well attended by the maritime industry and many different views were discussed.

On March 5, 1998, the Secretary of Transportation published a final rule in the **Federal Register** (63 FR 10781) that transferred Great Lakes Pilotage functions from the Saint Lawrence Seaway Development Corporation (SLSDC) to the Coast Guard.

The Coast Guard will continue the outreach process that began at the 1997 public meeting in Cleveland, Ohio. To help create an agenda for the meeting, we request that interested parties send items that they would like discussed during the meeting as soon as possible, preferably by January 14, 1999. Written items can be sent to the address listed under **ADDRESSES.** These items will become part of the public docket available for inspection and copying.

The purpose of the public meeting on January 28, 1999 is to provide a forum for members of the public to discuss options or any other ideas that would contribute to improving the safety, reliability and efficiency of the Great Lakes Pilotage System.

Public Meeting

The meeting will be an informal workshop open to the public. It is intended to bring together people who are knowledgeable about the issues addressed in this notice to assist the Coast Guard and SLSDC in enhancing the safety, reliability and efficiency of Great Lakes Pilotage.

Dated: December 22, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–126 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–15–M

Notices

Federal Register

Vol. 64, No. 6

Monday, January 11, 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

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Executive Committee Conference Call Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of conference call meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a Conference Call Meeting of the Executive Committee of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), will have a conference call meeting of the Advisory Board's Executive Committee on January 14, 1999. Several agenda items will be discussed, which will include forming initial recommendations on the USDA merit review procedures for education and extension competitive grants for subsequent transmission to the Secretary of Agriculture, as required under the new Agricultural Research, Extension, and Education Reform Act of 1998. This conference call will be open for full Advisory Board participation.

Dates: January 14, 1999, at 10:00–11:00 a.m., e.s.t.

Place: USDA, Research, Education, and Economics Advisory Board Office, Room 3918, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

Type of Meeting: Open to the public. To assure space and available access to phone lines, the public must request to join the conference call by contacting the phone number below by January 12, 1999.

Comments: The public may also file written comments before or within 2 weeks after the meeting with the Research, Education, and Economics (REE) Advisory Board Office. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

For Further Information Contact: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684, Fax: 202–720–6199, or E-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 31st day of December, 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 99–534 Filed 1–8–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Onondaga County Priority Watersheds Agricultural Environmental Management Program; (AEMP) Determination of Primary Purpose of Program payments for consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all County cost share payments made to individuals as a part of an Agriculture Environmental Management Plan are made primarily for the purpose of conserving water and protecting or restoring the environment in the priority watersheds of Onondaga County. This determination is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126). The determination permits recipients of these cost-share payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Walter G. Neuhauser, Executive Director of the Onondaga County Soil & Water Conservation District, 25.

Walter G. Neuhauser, Executive Director, Onondaga County SWCD, 2571 US Rt. 11, Suite #1, Lafayette, NY 13084–9641

or

Director, Conservation Operations Division, USDA Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013

SUPPLEMENTAL INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for Federal income tax purposes, if the Secretary of Agriculture determines that payments are made ''primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.'' The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a ''primary purpose'' determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

Procedural Matters

The authorizing legislation, regulations and operating procedures regarding the Onondaga County Priority Watersheds Agricultural Environmental Management Program have been examined using the criteria set forth in 7 CFR part 14. The U.S. Department of Agriculture has concluded that the cost-share payments made for implementation of best management practices under this program are made to provide financial assistance to eligible persons primarily for the purpose of conserving water resources and protecting or restoring the environment in the priority watersheds of Onondaga County.

A ''Record of Decision, Onondaga County Priority Watersheds Agricultural Environmental Management Program, Primary Purpose Determination for Federal Tax Purposes'' has been prepared and is available upon request from, Walter G. Neuhauser, Executive Director, Onondaga County Soil and Water Conservation District, 2571 U.S. Rt. 11, Suite #1, Lafayette, NY 13084–9641 or from the Director, Conservation Operations Division, USDA Natural Resources Conservation Service, PO Box 2890, Washington DC 20013.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations and operating procedures regarding the Onondaga County Priority Watersheds Agricultural Environmental Management Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments for implementation of best management practices made under this program as part of an Agricultural Environmental Management Plan are primarily for the purpose of conserving water resources, and protecting or restoring the environment, in the priority watersheds of Onondaga County. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such cost-share payments made under said program.

Signed at Washington, DC, on December 8, 1998.

Dan Glickman,

Secretary, Department of Agriculture.

[FR Doc. 99–520 Filed 1–8–99; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Forest Service

Tower Fire Rehabilitation Projects, Umatilla National Forest, Grant & Umatilla Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to rehabilitate lands and resources burned in 1996 by the Tower Fire. The project area is located on the North Fork John Day Ranger District and lies approximately 12 miles southeast of Ukiah, Oregon, within the North Fork John Day River Sub-basin.

Projects would be designed at the landscape level to replant forest and riparian vegetation (including the use of herbicides in some upland areas to control vegetation which would compete with new seedlings); stabilize slopes exposed by the fire; enhance wildlife habitat; reduce recreational disturbance of moderate and severely burned sites; reconstruct, repair, or decommission degraded roads and stream crossings; restore and protect stream habitat; reduce hazards along open roads, OHV trails, and a campground; restore forest stand structure and composition through precommercial or commercial thinning; reduce fuel loading to create conditions which would allow the use of prescribed fire; subsoil known areas of soil compaction; and salvage valuable timber that was damaged or killed by the fire. The proposed projects will be in compliance with the 1990 Umatilla National Forest Land and Resource Management Plan (Forest Plan), as amended, which provides the overall guidance for management of this area.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency will give notice of the full environmental analysis once it nears completion so that interested and affected people may participate and contribute to a final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by February 26, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Craig Smith-Dixon, North Fork John Day District Ranger, PO Box 158, Ukiah, OR 97880.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Tim Davis, Tower Projects Team Leader, North Fork John Day Ranger District. Phone: (541) 427–5341.

SUPPLEMENTARY INFORMATION: The Tower Fire burned approximately 50,800 acres, 46,300 of which occur on the Umatilla National Forest. The decision area for the Tower Fire Rehabilitation Projects includes all 46,300 acres. It includes portions of the Cable Creek, Bridge/Pine North Fork John Day, Big, and Hidaway watersheds of the North Fork John Day River Sub-basin. The area also includes all of the South Fork-Tower Roadless Area (16,300 acres) and is bounded on the south by the North Fork John Day Wilderness.

Originally, five separate analyses were proposed for salvage and restoration projects with the Tower Fire area. These were: Hairy Hazard Tree CE, Tower Fire Salvage EA, Big Tower Salvage and Revegetation Project, EA, South Tower Fire Recovery Projects EA, and Cable Fire Recovery Project EA. In January 1998, the Big Tower Fire Recovery Projects Decision Notice and Environmental Assessment was challenged in court. The Federal District Court upheld the project decision and the three salvage sales associated with the Big Tower Salvage and Revegetation Project were sold and awarded. The court was petitioned for a stay of implementation but the stay was denied. The District Court's decision was then appealed and the Ninth Circuit Court of Appeals overturned the decision, instructing the Forest Service to conduct an Environmental Impact Statement (EIS) for any further projects within the entire Tower Fire. All activities on the three timber sales associated with the Big Tower Salvage and Revegetation Project as well as the Hairy Hazard Tree Sale (which was to remove hazard trees along open roads) were stopped. At the time of the halt order, 19 million board feet of the 26 million board feet of timber sold had been cut and removed from three of the four timber sales. This notice of intent initiates the analysis for the required EIS covering the remainder of the Big Tower Salvage and Revegetation projects and all other fire recovery projects proposed within the burn. Since the fall of 1996, many restoration activities have been initiated, including tree planting, erosion seeding, road stabilization, and salvage of fire-killed trees. Completion of the EIS and associated decisions will allow these and other watershed restoration projects to be implemented.

The purpose of the Forest Service proposal is to rehabilitate portions of the burn to facilitate reaching the desired future condition for the area and recover economic value of timber where such salvage is compatible with protection of damaged resources. Proposed projects would involve: Reforestation of areas which sustained high tree mortality (including ecologically important stands of western white pine); revegetation of burned riparian areas; reconstruction of roads open to the public and repair of roads closed to the public but still required for administrative use; decommissioning of degraded roads; repair or replacement of road culverts to improve fish passage; reconstruction of stream crossings which are considered at risk due to fire-

induced high flows; removal or repair of degraded stock ponds; restoration of large wood to deficient stream channels; construction of grade control structures where gullys have been identified on streams; seeding and fertilization where wildlife forage has been limited by the fire; breaking tops out of scattered fire-killed trees to enhance snag habitat; fencing of degraded meadows, springs, and stockponds to promote natural recovery and improve wetland habitat; relocation of the Roundaway 4-Wheeler trail to a safer, more stable site; removal of hazardous trees along open roads, OHV trails, several trailheads, and a campground; stabilization of highly erodible slopes and a small landslide on Hidaway Creek by seeding or transplanting shrubs; subsoiling areas compacted by previous timber harvest practices to reduce overland flows; application of prescribed fire over a five year period to enhance forage and shrub composition; salvage harvest of 5,100 acres resulting in recovery of approximately 21 MMbf of valuable fire-killed timber (including timber already sold but enjoined by the court order); thin overstocked stands (up to 1,000 acres (3.2 MMbf) of which would be of merchantable size) to improve tree vigor, adjust stand structure to reduce threat of future crown fire, and mimic historic specifies compositions; control competing vegetation within reforestation areas using herbicides to assure seedling survival; define and harden dispersed campsites and install informational signing to control recreational disturbance of burned areas; and create a fuel break between the South Fork-Tower Roadless Area and the North Fork John Day Wilderness to expand options for natural fires in both areas. Only three planting and the above-mentioned fuelbreak would occur within the South Fork-Tower Roadless Area, no harvest or other restoration projects are proposed within this area.

Forage enhancement seeding would occur on sites that are devoid of herbaceous cover or with limited amounts of vegetation. The seeding mixture would consist of native seed and/or non-persistent annuals, be certified weed free, and would not exceed 20 pounds per acre. Application would be accomplished aerially with selected areas seeded by hand. Aerial broadcast fertilization of 100 pounds per acre would also be conducted. The fertilizer mix would consist of 27–12-0 plus 12% pelletized sulfur. No fertilizer would be applied in or adjacent to Riparian Habitat Conservation Areas (RHCA's).

Proposed timber salvage and commercial thinning units would be harvested using tractor, harvester/forwarder, skyline, and helicopter logging systems. Access for salvage and commercial thinning would require reconstruction of about 6 miles of existing roads and construction of approximately 10 miles of temporary roads. The temporary roads would be closed and obliterated after completion of project activities. Activities that would occur concurrently or in association with timber harvest include subsoiling to mitigate soil compaction, waterbarring, erosion control seeding of skid trails and landings to restore soil productivity, burning of some slash, and trapping or barriers to prevent animal damage to seedlings.

Planting of tree seedlings both within and outside harvest units would involve control of vegetation which could compete aggressively enough to kill the seedlings. Control would be achieved across approximately 11,000 planted acres by the ground application of herbicides. The objective of such treatment is to ensure that 70% or more of the planted seedlings will still be alive after three growing seasons. With an average of 222 planted seedlings per acre, this means that herbicides would be applied to 13% of a reforestation unit—87% of the land area within the unit would not receive herbicides. No herbicide application would occur within RACFISH Riparian Habitat Conservation Areas. Herbicides would be applied once during the five-year tree establishment period. Herbicides would be used as a correction treatment when other methods are ineffective or would increase project costs unreasonably. For areas that are not expected to exceed a competing vegetation threshold, an 18 inch hand scalp would be used as a site preparation method when the seedlings are planted but no herbicide would be applied.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). Some scoping has already been conducted through the five initial analyses mentioned earlier. Information received during this scoping will be incorporated into the analysis for the Environmental Impact Statement (EIS). Additional scoping will include listing of this EIS in the Winter 1999 issue of the Umatilla National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have already indicated their interest in such activities; and news releases in the East Oregonian and other local newspapers. No public meetings have been planned at this time; they will be scheduled later as needed. This notice is to encourage members of the public, interested organizations, federal, state and county agencies, and local tribal governments to take part in planning this project. They are encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. Any information received will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues
2. Identifying major issues to be analyzed in depth
3. Identifying issues which have been covered by a relevant previous environmental analysis
4. Considering additional alternatives based on themes which will be derived from issues recognized during scoping activities
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Preliminary issues include: Effects of the proposed fuelbreak on the roadless character of the South Fork-Tower Roadless Area; cumulative effects of past and proposed activities together with effects from the fire; effects of proposed activities on soils exposed by the fire; effects of proposed activities on water quality and the anadromous and resident fisheries resource; ability of proposed activities to restore historic vegetation composition, structures, and patterns; effects of proposed herbicide use, and economic viability of salvage.

A full range of alternatives will be considered, including a ''no-action'' alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives will vary in (1) the number, type and location of rehabilitation projects, (2) use of herbicides or mechanical methods to control competing vegetation in areas to be planted, (3) the silvicultural and post-harvest treatments prescribed, (4) the amount and location of harvest and thinning, and (5) the amount of time needed to move the area toward its desired condition. Tentative action alternatives are: The proposed action, a modified proposed action with no use of herbicides, an alternative which would not remove or reduce the current number of live trees within the burn, and an alternative that excludes any harvest or temporary road construction.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available to the public for review by April, 1999. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the

Federal Register. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** It is important that those interested in the management of the Umatilla National Forest participate at that time.

The Final EIS is scheduled to be completed by July, 1999. In the final EIS, the Forest Service will to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service is the lead agency. Jeff Blackwood, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 30, 1998.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 99–487 Filed 1–8–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Notice of Annual Board of Directors Meeting

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of annual board meeting.

SUMMARY: The Board of Directors of the National Sheep Industry Improvement Center announces that it will hold its annual Board of Directors meeting. The meeting will be held over 2 days in the Washington, DC area.

DATES: The meeting dates are:

1. Februrary 17, 1999, 7:00 p.m. to 10:00 p.m., Arlington, VA.

2. February 18, 1999, 8:30 a.m. to 4:00 p.m., Washington, DC.

ADDRESSES: The meeting locations are:

1. Arlington, VA—Holiday Inn Westpark, 1900 N. Ft. Meyer Drive, Arlington, VA, Board Room conference room.

2. Washington, DC—USDA South Building, 1400 Independence Avenue, SW, Washington, DC, Room 3107.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, Stop 3252, Room 4204, 1400 Independence Ave., SW., Washington, DC 20250–3252, telephone (202) 690–0368. (This is not a toll free number.) E-mail: thomas.stafford@usda.gov. The Federal Information Relay service on 1–800–877–8339 may be used by TDD users.

SUPPLEMENTARY INFORMATION: The February board meeting will serve as the National Sheep Industry Improvement Center's annual meeting. Specific meeting rooms are subject to last minute changes.

Background

The sheep and goat industries, the 1996 Farm Bill established the National Sheep Industry Improvement Center to assist and strengthen the U.S. sheep and goat industries through projects and assistance financed through the Center's revolving fund. The Center is managed by a nine member, non-compensated board. The Board of Directors may use the monies in the fund to make grants, and intermediate and long-term loans, contracts, cooperative repayable agreements, or cooperative agreements in accordance with an annual strategic plan submitted to the Secretary of Agriculture.

Purposes of the Center

The purposes of the Center are to:

(1) Promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States;

(2) Optimize the use of available human capital and resources within the sheep or goat industries;

(3) Provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research;

(4) Advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to the special needs of the sheep or goat industries on both a regional and national basis; and

(5) Adopt flexible and innovative approaches to solving the long-term needs of the United States sheep and goat industries.

Board Meetings

Board meetings are open to the public.

Authority: 7 USC 2008j, Pub.L. 104–130.

Dated: December 16, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–474 Filed 1–8–99; 8:45 am]

BILLING CODE 3410–XY–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to deletes commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Meal Kits
- 8970–01–E59–0239A
- 8970–01–E59–0240A
- 8970–01–E59–0241A
- 8970–01–E59–0242A
- 8970–01–E59–0243A
- 8970–01–E59–0244A
- 8970–01–E59–0239B
- 8970–01–E59–0240B
- 8970–01–E59–0241B
- 8970–01–E59–0242B
- 8970–01–E59–0243B
- 8970–01–E59–0244B
- 8970–01–E59–0239C
- 8970–01–E59–0240C
- 8970–01–E59–0241C
- 8970–01–E59–0242C
- 8970–01–E59–0245A

(100% of the requirement of the Oklahoma Army National Guard)

NPA: The Meadows Center for Opportunity, Inc., Edmond, Oklahoma

Services

Janitorial/Custodial, Forest Service Building, Mare Island, California

NPA: V-Bar Enterprises, Inc., Suisun City, California

Janitorial/Custodial, Fort Wadsworth USARC, Building 356, Staten Island, New York,

NPA: Fedcap Rehabilitation Services, Inc., New York, New York

Mailroom Operation, Bureau of the Census, Suitland Federal Center and Metropolitan Area, 4700 Silver Hill Road, Washington, DC

NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Filler, Executive Day
- 7530P902476F

Planner, Executive Day
- 7530P902477F

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–436 Filed 1–8–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 10, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 FR 65746) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Food Service, 147 Fighter Wing, Texas Air National Guard, Ellington Field, Houston, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–437 Filed 1–8–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 and A–580–816]

Certain Cold-Rolled and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results for the fourth reviews of certain cold-rolled and certain corrosion-resistant carbon steel flat products from Korea. These reviews cover the period August 1, 1996 through July 31, 1997. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian at (202) 482–0162 or Cindy Sonmez at (202) 482–3362; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Final Results

On September 9, 1998, the Department published the preliminary results for this review. 63 FR 48173. Section 751(a)(3)(A) of the Act requires the Department to complete an administrative review within 120 days of publication of the preliminary results. However, if it is not practicable to complete the review within the 120-day time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit to180 days from the date of publication of the preliminary results. The Department has determined that it is not practicable to issue its final results within the original 120-day time limit (*See* Decision Memorandum from Joseph A. Spetrini to Robert LaRussa dated December 11, 1998). We are therefore extending the deadline for the final results in this review to 180 days from the date on which the notice of preliminary results was published. The fully extended deadline for the final results is March 8, 1999.

Dated: December 28, 1998.

Richard O. Weible,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–434 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Notice of Postponement of Final Results of Antidumping Duty Administrative Review: Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0405 or 482–3833, respectively.

Postponement of Final Results of Review

On September 25, 1997, the Department of Commerce (the Department) initiated an antidumping duty administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (62 FR 50292). On April 3, 1998 we extended the time limit of the preliminary results (63 FR 16470), which were published on September 4, 1998 (63 FR 47227). The final results of review are currently due January 4, 1999. It is not practicable to complete this review within the original time limit. Therefore, the Department is postponing the deadline for issuing these final results of review until no later than March 3, 1999.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)), and 19 CFR 351.213 (h)(2).

Dated: January 4, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–553 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Columbian Home Products, LLC (formerly General Housewares Corporation), the Department of Commerce is conducting an administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. This review covers Cinsa, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V., manufacturers/exporters of the subject merchandise to the United States. The eleventh period of review is December 1, 1996, through November 30, 1997.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import

Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1998).

Background

On October 10, 1986, the Department published in the **Federal Register**, 51 FR 36435, the final affirmative antidumping duty determination on certain porcelain-on-steel (POS) cookware from Mexico. We published an antidumping duty order on December 2, 1986, 51 FR 43415.

On December 5, 1997, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period December 1, 1996, through November 30, 1997 (the POR), 62 FR 64353. The Department received a request for an administrative review of Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA) from Columbian Home Products, LLC (CHP), formerly General Housewares Corporation (GHC) (hereinafter, the petitioner). We published a notice of initiation of the review on January 26, 1998, 63 FR 3702.

On February 18, 1998, the petitioner requested that the Department determine whether antidumping duties have been absorbed by Cinsa and ENASA. On March 20, 1998, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period.

On April 9, 1998, CHP informed the Department that it is the legal successor-in-interest to GHC pursuant to the March 31, 1998, sale of all of GHC's POS cookware production assets, product lines, inventory, real estate, and brand names to CHP.

On August 6, 1998, the Department extended the time limit for the preliminary results in this case until December 31, 1998. *See Extension of Time Limit for Antidumping Duty Administrative Review,* 63 FR 42001.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review are porcelain-on-steel cookware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Allegation of Reimbursement

For the reasons discussed below, the Department has preliminarily determined that the producer/exporters, Cinsa and ENASA, reimbursed their affiliated importer Cinsa International Corporation (CIC) for antidumping duties assessed during this POR in connection with the liquidation of entries made during the 5th and 7th review periods of the antidumping duty order of POS cookware from Mexico. This determination is based on the April 1997 cash transfer from Cinsa and ENASA's corporate parent, Grupo Industrial Saltillo, S.A. de C.V. (GIS) through its subsidiary GISSA Holding USA (GISSA Holding) to CIC.

The Department's reimbursement regulation, 19 C.F.R. section 351.402 (1998) provides for the Department to deduct from the export price or constructed export price the amount of any antidumping duty which the ''exporter or producer'' reimbursed to the importer. Cinsa and ENASA have acknowledged that the April 1997 transfer was intended, *inter alia,* to cover antidumping duties on 5th and 7th review entries liquidated during the 11th review period.

In a June 2, 1997, submission in an earlier review which has been added to the record of this review, respondents state: ''[t]o ensure that CIC would have enough funds to cover anticipated antidumping duty deposits and assessment liability subsequent to the liquidation of fifth and seventh administrative review entries during the POR, on April 28, 1997, GISSA Holding, USA, the corporate owner of CIC, increased its capital contribution to CIC.''

In the two prior reviews of this order, the Department declined to find that this transaction involved reimbursement within the terms of its regulation because it deemed that the transfer had not been made by Cinsa or ENASA, *i.e.*, it had not been made by an ''exporter or producer.'' However, upon reconsideration, the Department finds that, in making this transfer of funds dedicated to the payment of antidumping duties, GIS acted on behalf of Cinsa and ENASA, such that the transfer may be attributed to those two firms.

At the Department's February 3, 1998, verification in the tenth review with respect to the reimbursement issue (the public version of the report has been placed on the record of this review), company officials explained that GIS handles all corporate treasury functions. In essence, GIS ''sweeps'' all funds from all its subsidiary companies on a daily basis into GIS' cash accounts. The primary purposes of this cash management system include investing the funds available from the various subsidiaries at preferential rates of return and providing funds to subsidiaries at lower rates than they could obtain outside the corporation. For example, GIS also pays out dividends to shareholders, makes principal and interest loan repayments to banks, and pays taxes.

As necessary, GIS deposits funds into the individual bank accounts of its subsidiaries so that they can pay suppliers. Charges are also made between subsidiaries via the GIS corporate treasury department. For example, when Cifunsa (foundry for engine blocks, automotive parts) purchases scrap from Cinsa, GIS debits its Cifunsa inter-company account and credits its Cinsa inter-company account. (There was no record of a debit to the Cinsa inter-company account corresponding to the April 1997 transfer by GIS.) GIS's cash from its subsidiaries is comingled. Therefore, GIS does not monitor what portion of any specific investment or disbursement was funded by what specific subsidiaries, except as indicated above.

In short, GIS manages funds on behalf of its subsidiaries, including Cinsa and ENASA. In making the transfer in question, GIS acted for the direct benefit of Cinsa and ENASA and their U.S. importation arm, CIC. CIC markets only products manufactured by Cinsa and ENASA; it does not market products for any other member of the corporate family. Thus, Cinsa and ENASA have a direct interest in assisting CIC in paying antidumping duties on the POS cookware products.

Given these facts, we find that GIS (through GISSA Holding) acted on

behalf of Cinsa and ENASA in providing funds to CIC during the POR to pay antidumping duties on prior entries. Therefore, those funds constitute reimbursement within the meaning of the regulation.

In *Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 13204, 13214 (March 18, 1998), the Department concluded that, where a respondent was previously found to have engaged in reimbursement activities, the Department had the authority to establish a rebuttable presumption that the importer must continue to rely on reimbursements in order to meet its obligations to pay antidumping duties. Thus, based on our finding that Cinsa and ENASA, through GIS, reimbursed CIC for antidumping duties assessed on 5th and 7th review entries, the Department has preliminarily determined that the reimbursement regulation applies to entries made during the current POR.

We will give Cinsa and ENASA an opportunity to submit factual information to rebut the presumption. To rebut the presumption and avoid a finding of reimbursement as to the entries being reviewed in this review, or a subsequent review, respondents normally must demonstrate that, during the POR (in this case the 11th POR), antidumping duties were assessed against the affiliated importer and the affiliated importer did in fact pay all antidumping duties assessed during that POR, without reimbursement, directly or indirectly, by the exporter/producer. In the alternative, failing such a demonstration, or if circumstances indicate that this approach does not provide a reasonable rebuttal (e.g., the volume or value of entries assessed was insufficient; the impact of a financial windfall during the period), respondents must demonstrate by clear and convincing evidence that there are changed circumstances (e.g., completed corporate restructuring) sufficient to obviate the need for reimbursement of antidumping duties to be assessed on the entries under review. Information seeking to rebut this presumption must be submitted no later than February 1, 1999. Factual information in response to respondents' submissions must be submitted by February 16, 1999.

Duty Absorption

On February 18, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, both Cinsa and ENASA sold to the United States through an importer that is affiliated within the meaning of section 751(a)(4) of the Act.

Section 351.213(j)(2) of the Department's regulations provides that for transition orders (*i.e.*, orders in effect on January 1, 1995), the Department will conduct duty absorption reviews, if requested, for administrative reviews initiated in 1996 or 1998. Because the order underlying this review was issued prior to January 1, 1995, and this review was initiated in 1998, we will make a duty absorption determination in this segment of the proceeding.

On March 20, 1998, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. Neither Cinsa nor ENASA responded to the Department's request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Therefore, we find that antidumping duties have been absorbed by the producer or exporter during the POR.

Fair Value Comparisons

To determine whether sales of POS cookware by Cinsa and ENASA to the United States were made at less than normal value (NV), we compared export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2), we compared the EPs or CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production (COP), as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cinsa and ENASA (as well as products produced by Acero Porcelanizado S.A. de C.V. (APSA) and sold by Cinsa—see discussion under ''Claim for Startup Cost Adjustment'' section, below) covered by the description in the ''Scope of the Review'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: quality, gauge, cookware category, model, shape, wall shape, diameter, width, capacity, weight, interior coating, exterior coating, grade of frit (a material component of enamel), color, decoration, and cover, if any.

Use of Constructed Value

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed. Cir. 1998) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with the *CEMEX* decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market, as described in the ''Scope of Investigation'' section of this notice, above, that were made in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there

were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire, as described in the ''Product Comparisons'' section of this notice.

Export Price and Constructed Export Price

For certain sales made by Cinsa and ENASA, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments, rebates, U.S. and foreign inland freight, U.S. and Mexican brokerage and handling expenses, and U.S. duty. We also deducted the amount of antidumping duties reimbursed to CIC by Cinsa and ENASA, consistent with our reimbursement finding discussed above. (*See*, December 31, 1998, Calculation Memorandum) (Calculation Memo).

For the remaining sales made by Cinsa and ENASA during the POR, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by CIC after having been imported into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments, rebates, U.S. and foreign inland freight, U.S. and Mexican brokerage and handling expenses, and U.S. duty. We also deducted the amount of antidumping duties reimbursed to CIC by Cinsa and ENASA, consistent with our reimbursement finding discussed above. (*See* Calculation Memo).

We made further deductions, where appropriate, for credit, commissions, and indirect selling expenses that were associated with economic activities occurring in the United States. We recalculated CIC's indirect selling expenses to include bad debt expenses, financial expenses, marketing and research expenses, and depreciation expenses. Because CIC is a sales subsidiary and does not perform any further manufacturing, all CIC's expenses were deemed to be sales-related. For purposes of calculating the indirect selling expense ratio, we also reallocated CIC's total expenses over the total sales value excluding the value of EP sales. (*See* Calculation Memo). We performed this reallocation because CIC performs limited sales-related functions with respect to EP sales and equal allocation of all CIC expenses across all U.S. sales in which CIC is involved would disproportionately shift these costs from CEP to EP sales. Finally, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, we based NV on either (1) the price (exclusive of value-added tax) at which the foreign like product was first sold for consumption in the home market, in accordance with section 773(a)(1)(B)(i) of the Act, or (2) constructed value (CV), in accordance with section 773(a)(4) of the Act, as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice, respectively.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer, after the deductions required under section 772(d) of the Act. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997). In this review, Cinsa and ENASA reported three channels of distribution in the home market: (1) direct sales to customers from the Saltillo plant, (2) sales shipped from their Mexico City warehouse, and (3) sales shipped from their Guadalajara warehouse. In analyzing the data in the home market sales listing by distribution channel and sales function, we found that the three home market channels did not differ significantly with respect to selling activities. Similar services, such as freight and delivery services and inventory maintenance, were offered to all or some portion of customers in each channel. Based on this analysis, we find that the three home market channels of distribution comprise a single level of trade.

Cinsa and ENASA reported both EP and CEP sales in the U.S. market. The EP sales were made by the exporter to the unaffiliated customer, who received the merchandise at the border between Mexico and the United States (FOB Laredo, Texas). We noted that EP sales involved basically the same selling functions associated with the home market level of trade described above. Therefore, based upon this information, we have determined that the level of trade for all EP sales is the same as that in the home market.

The CEP sales were based on sales made by the exporter to CIC, the U.S. affiliated reseller, who then sold the merchandise directly to unaffiliated purchasers in the United States from its San Antonio warehouse. Based on our analysis, after making the appropriate deductions under section 772(d) of the Act, there are two selling activities associated with Cinsa's and ENASA's sales to CIC reflected in the CEP: (1) freight and other movement expenses from the plant to the affiliated reseller's San Antonio warehouse, and (2) freight and delivery services (excluding actual freight charges), and inventory maintenance, and other support services (such as sales personnel, order processing personnel, and billing

personnel), which are the same functions found in the home market. Therefore, we determine that Cinsa's and ENASA's CEP sales and their home market sales are made at the same level of trade. Accordingly, because we find the U.S. sales and home market sales to be at the same level of trade, no level of trade adjustments under section 773(a)(7)(A) of the Act are warranted.

CEP Offset

Section 773(a)(7)(B) of the Act provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP, if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP and NV affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is a different home market level of trade but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) of the Act and is the lesser of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price in calculating CEP.

The CEP offset is not automatic each time we use CEP.

In their questionnaire responses, Cinsa and ENASA claimed that the sales support activities (such as freight and delivery services, excluding actual freight charges, and inventory maintenance), and other support services (such as sales personnel, order processing personnel, and billing personnel) provided to home market and to U.S. customers are generally the same. The respondents nevertheless requested an adjustment to NV when NV is compared to U.S. CEP sales because they claim that home market sales are made at a more advanced level of trade than CEP sales because the NV sales price includes indirect selling expenses attributable to sales support activities and other support services noted above, while the CEP sales price is exclusive of all indirect selling expenses and the selling functions attributable thereto.

However, as discussed above, we find that the selling functions performed at the CEP level are essentially the same as those performed in the home market. Accordingly, we consider the home market and CEP levels of trade comparable. We disagree with respondents' assertion that differences in indirect selling expenses reflect a difference in level of trade. Because we find the CEP and home market levels of trade are the same, an adjustment to NV is not warranted.

Cost of Production Analysis

The Department disregarded certain sales made by Cinsa and ENASA for the period December 1, 1995, through November 30, 1996 (the most recently completed review of Cinsa and ENASA), pursuant to a finding in that review that sales were made below cost. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that respondents Cinsa and ENASA made sales in the home market at prices below the cost of producing the merchandise in the current review period. As a result, the Department initiated investigations to determine whether the respondents made home market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Cinsa's and ENASA's cost of materials and fabrication costs for the foreign like product, plus amounts for home market SG&A and packing costs in accordance with section 773(b)(3) of the Act. Because Cinsa and ENASA reported monthly costs, we created an annual average COP on a product-specific basis.

We relied on COP information submitted by Cinsa and ENASA, except in the following instances where it was not appropriately quantified or valued: (1) frit prices from an affiliated supplier did not approximate fair market value prices; therefore, we increased frit prices by the amount of the undocumented discount given by the affiliated supplier; (2) we included the APSA acquisition costs in Cinsa's general and administrative expenses (*see*, Calculation Memo); and (3) we revised Cinsa's and ENASA's submitted interest costs to exclude the calculation of negative interest expense.

B. Claim for Startup Cost Adjustment

The information submitted by Cinsa and ENASA in this review fails to demonstrate entitlement to a startup cost adjustment under section 773(f)(1)(C) for the additional production costs incurred in connection with the July 1977 acquisition of APSA. Under the definition of a startup cost adjustment, two conditions must both be satisfied: (1) a company is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. Since the claim for a startup cost adjustment is not being made for the production of a new product, the first condition must be satisfied through evidence of either a new plant or the substantially complete retooling of the existing plant. This substantial retooling must involve the replacement of nearly all production equipment and a complete revamping of existing machinery.

The Department has addressed the issue of what constitutes a ''new production facility'' within the meaning of section 773(f)(1)(C) in several recent cases. See, *Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40401 (July 29, 1998), *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany*, 63 FR 13170, 13199 (March 18, 1998), and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea*, 62 FR 51420, 51426 (October 1, 1997) (*Roofing Nails from Korea*). In order for an existing facility to be considered a new production facility within the meaning of section 773(f)(1)(C) of the Act, the Statement of Administrative Action (SAA) at 836 provides that it must be retooled to the extent that it becomes a brand new facility in virtually all respects. The SAA and the Department's regulations define new production facilities as including ''the substantially complete retooling of an existing plant'' during the period of investigation or review (SAA at 836; 19 CFR 351.407(d)(1)(i)). This substantial retooling must involve the replacement of nearly all production equipment and a complete revamping of existing machinery (SAA at 836). Thus, the SAA makes clear that, in analyzing these situations, an adjustment for startup costs is warranted only in those circumstances wherein the renovations result in a nearly-new facility.

In *Roofing Nails from Korea*, the Department rejected respondent Kabool's startup claim noting that Kabool had not replaced or rebuilt existing machinery and equipment but, instead, had merely moved these assets to a new site. The Department also stated that, because the first condition of startup— a new production facility or product—had not been met, it was not required to address whether Kabool's production levels had been limited during the POR.

In this review, we do not consider Cinsa's installation of new equipment and adaptation of existing kilns to handle increased production volume a new plant or a substantially complete

retooling of the existing plant. We consider the situation in the instant review to be parallel to that in *Roofing Nails from Korea* where respondent Kabool moved equipment from one location to another. The partial retooling of Cinsa's plant to incorporate machinery acquired from APSA and to begin commercial production of APSA-designed cookware did not have a substantial effect on virtually all of the assets at Cinsa's facility.

With regard to the second factor—whether production levels were limited by technical factors associated with the initial phase of commercial production—it need not be addressed because the first factor of the test has not been satisfied. This finding that Cinsa did not use new production facilities or produce a new product during the POR is sufficient to deny Cinsa's claim. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56618 (October 22, 1998), and *Roofing Nails from Korea*. Therefore, we have denied respondents' claim for a startup cost adjustment. *See* the Calculation Memo for an explanation of how the aforementioned acquisition costs were included in Cinsa's costs.

C. Test of Home Market Prices

We compared the weight-averaged, per-unit COP figures for the period December 1996 to November 1997, to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP (net of selling expenses) to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

D. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act).

The results of our cost tests for both Cinsa and ENASA indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost tests also indicated that for certain other home market models more than twenty percent of home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV. Finally, our cost tests also indicated that for certain home market models all contemporaneous sales of comparable products were made at prices below the COP. Therefore, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

E. Calculation of CV

For Cinsa's and ENASA's products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared U.S. prices to CV, in accordance with *CEMEX*, as discussed above.

In accordance with section 773(e)(1) of the Act, we calculated a CV based on the sum of the respondents' cost of materials, fabrication, SG&A, and U.S. packing costs as reported in the U.S. sales listing. We calculated CV based on the methodology described in the ''Calculation of COP'' section, above.

In accordance with section 773(e)(2)A), we based SG&A and profit on the actual amounts incurred and realized by Cinsa and ENASA in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

F. Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based the respondents' NV on home market prices. For both of the respondents, we calculated NV based on the VAT-exclusive gross unit price and deducted, where appropriate, inland freight, rebates, and early payment discounts.

For comparisons to Cinsa's and ENASA's EP sales, we made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses and commissions. We offset home market commissions with U.S. indirect selling expenses capped by the amount of home market commissions (no commissions were incurred on EP sales). For comparisons to Cinsa's and ENASA's CEP sales, we also deducted credit expenses and commissions from NV. We made adjustments for differences in packing expenses for both Cinsa and ENASA. We also made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

G. Price-to-CV

Where we compared EP or CEP to CV, we made circumstance-of-sale adjustments by deducting from CV the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses (except those deducted in calculating CEP), in accordance with section 773(a)(8) of the Act and section 351.410(c) of the Department's regulations.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918, March 6, 1998, and Policy Bulletin 96–1: *Currency Conversions*, 61 FR 9434, March 8, 1996. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for

the period December 1, 1996, through November 30, 1997, are as follows:

Manufacturer/exporter	Period	Margin
Cinsa	12/1/96–11/30/97	64.02
ENASA	12/1/96–11/30/97	124.69

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufactures or exporters will continue to be 29.52 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise. In calculating these importer-specific assessment rates, we will take into account the amount of the reimbursement calculated on sales during the POR. *See* Calculation Memorandum for details. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP) for each importer) by the entered value of the merchandise. Upon the completion of this review, we will direct the U.S. Customs Service to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise made by the importer during the POR.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: December 31, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–435 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–803]

Titanium Sponge From the Republic of Kazakhstan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 8, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan (Kazakhstan). The review covers the period August 1, 1996, through July 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments and have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR part 351.

Background

On September 8, 1998, the Department published in the **Federal Register** (63 FR 47478) the preliminary results of its administrative review of the antidumping finding on titanium sponge from Kazakhstan. We did not receive any comments from interested parties. The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Kazakhstan. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Final Results of Review

In the preliminary results, the Department stated that we would confirm the information provided by Specialty Metals Company and Ust-Kamenogorsk Titanium and Magnesium Plant regarding the existence of sales of subject merchandise to the United States that were entered under temporary importation bond (TIB). *See* preliminary results at 47478. We contacted the Customs Service and confirmed that certain entries of subject merchandise manufactured by Specialty Metals Company and Ust-Kamenogorsk Titanium and Magnesium Plant entered the United States under TIB during the period of review. *See* Memorandum to the File, ''Customs Service Confirmation of Temporary Importation Bond Entries'', dated December 30, 1998.

For the reasons set out above and in the preliminary determination, we determine that the following dumping margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Specialty Metals Company/Ust-Kamenogorsk Titanium and Magnesium Plant (one entity)	8/1/96–7/31/97	00.0
Kazakhstan-wide rate	8/1/96–7/31/97	83.96

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Since there were no sales with dumping margins, we will instruct Customs not to assess dumping duties on any shipments of subject merchandise exported by the above-referenced entity that entered the United States during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of titanium sponge from Kazakhstan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for merchandise manufactured and exported to the United States directly by Specialty Metals Company/Ust-Kamenogorsk Titanium and Magnesium Plant (one entity) will be 0.00 percent; (2) merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous administrative review and which have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) for Kazakhstan manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Kazakhstan-wide rate; and (4) the cash deposit rate for non-Kazakhstan exporters of subject merchandise from Kazakhstan that were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Kazakhstan supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this review of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. *See* 63 FR 24391, 24403 (May 4, 1998). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: January 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–551 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 8, 1998, the Department of Commerce (''the

Department'') published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the Russian Federation (''Russia''). The review covers the period August 1, 1996, through July 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from Titanium Metals Corporation (''the petitioner'') and rebuttal comments from AVISMA Magnesium-Titanium Works (''AVISMA'') and Interlink Metals & Chemicals S.A. and Interlink Metals, Inc. (collectively ''Interlink''). We did not receive any comments from TMC Trading International, Ltd., the other respondent in this review. After considering these comments, we have not changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936 and (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations refer to the regulations codified at 19 CFR part 351 (1998).

Background

On September 8, 1998, the Department published in the **Federal Register** (63 FR 47474) the preliminary results of its administrative review of the antidumping finding on titanium sponge from Russia. The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (''HTS'') subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Interested Party Comments

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the petitioner on October 8, 1998, and rebuttal comments from AVISMA and Interlink on October 13, 1998. We did not receive comments from any other party.

Comment 1: The petitioner argues that the Department erred when it valued electricity with the electricity rate for industrial users from the Guayana region of Venezuela, as reported by the Venezuelan Chamber of Electric Industry, rather than with an industrial user rate for all of Venezuela. According to the petitioner, selecting this regional rate broke with the Department's past practice of valuing electricity with a country-wide rate. Specifically, the petitioner notes that the Department used a Brazilian-wide rate in the preliminary results for the 1994–1995 and 1995–1996 administrative reviews. *See* the petitioner's July 16, 1998, submission at 3, citing to *Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge from the Russian Federation*, 61 FR 39437, (July 29, 1996); and *Preliminary Results of Antidumping Duty Administrative Review: Titanium Sponge from the Russian Federation*, 62 FR 25920 (May 12, 1997).

The petitioner also claims that there is no provision in the applicable statute that allows, or even mentions, subdividing a selected surrogate country for valuation purposes. In fact, the petitioner argues, the statute mandates the use of country-wide rates because it directs the Department to utilize a ''country'' to value the factors of production. *Id.* at 3. The petitioner contends that it is the Department's established practice to determine the economic comparability of a potential surrogate market economy country by examining the country-wide characteristics, such as the level of per capita Gross *National* Product, *national* distribution of labor and *national* growth rates. *Id.* at 3, emphasis in original. For this reason, the petitioner argues that the Department should be consistent and use country-wide prices for valuing the factors of production. The petitioner notes that both itself and Interlink submitted general-industry electricity rates for all of Venezuela and recommends that the Department, for the final results of review, use either of these two country-wide rates.

According to Interlink and AVISMA (collectively ''the respondents''), the Department was correct to value electricity with the industrial user rate from the Guayana region of Venezuela. The respondents state that this region contains the country's largest industrial companies, including Venezuela's three aluminum producers. Furthermore, the respondents argue that EDELCA, the company that provides electricity to this region, is Venezuela's largest utility company and accounts for approximately 70 percent of Venezuela's total electricity production. In addition, the 177 industrial users EDELCA serviced in 1997 accounted for 25 percent of Venezuela's electricity consumption. *See* respondent's submission dated March 3, 1998 at 2.

The respondents also contend that the Department is not required by statute or practice to use country-wide rates for valuing factors of production in nonmarket economy cases. The respondents argue that the Department addressed this issue in the *Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China*, 61 FR 14057, 14062 (March 29, 1998), where the Department stated ''Since there is not sufficient information on the record to weigh the appropriateness of using one Indian state's electricity rates over those in another, we have based the surrogate value on the simple average of all Indian state rates found in the 1995 CMIE source.'' According to the respondents, the Department's decision to use a country-wide rate from India was based not on a requirement that it use a country-wide rate, but rather on a recognition that there was insufficient information on the record on which to base a decision to use a rate specific to a particular Indian state. *See* respondent's July 21, 1998 submission at 2. Moreover, the respondents claim that the Department's decision explicitly acknowledges that it would have used a rate specific to a particular state or region within the surrogate country if the information on the record suggested that this rate was a better indicator of the rate that AVISMA would likely pay if located in the surrogate country. *Id.* at 2. Therefore, argue the respondents, since the statute and past practices do not prohibit the Department from using a regional rate, and the record evidence indicates that the industrial-user electricity rate from the Guayana region is the most representative of the prices that AVISMA would pay if located in

Venezuela, the Department should continue to use this rate for the purposes of the final results of this review.

Department Position: We agree with the respondents. Section 773(c)(4) of the Act instructs the Department to select a surrogate market economy country that is (1) at a comparable level of economic development to that of the nonmarket economy country and (2) produces merchandise that is comparable to the subject merchandise. The Department's regulations, at section 351.408(b), provide further guidance in selecting the appropriate surrogate country by stating that the Secretary will place primary emphasis on per capita GDP as the measure of economic comparability. As the petitioner notes, it is also the Department's practice to examine additional criteria, such as national growth rates and the national distribution of labor, when selecting the appropriate surrogate country. However, all of the above criteria and practices are used to select the surrogate country and are not relevant in selecting factor of production values within the surrogate country once selected. Section 773(c)(1)(B) of the Act states that the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

In our effort to value the factors of production in an accurate manner, the Department uses both regional and country-wide market economy values where the record evidence demonstrates that such values provide the best available information by which to value the nonmarket economy producer's factors of production. In the instant case, the evidence on the record demonstrates that the Guayana region contains a high concentration of Venezuela's largest industrial users and accounts for 70 percent of Venezuela's total electricity production. Venezuela's three producers of aluminum, a product comparable to titanium, are located in Guayana and receive the industrial rate for this region. Furthermore, 177 industrial users in this region accounted for 25 percent of Venezuela's total electricity consumption in 1997. Although the respondent's data does not explicitly list what percent these 177 industrial users represent of all industrial consumption, we can infer from the fact that they account for 25 percent of all total electrical consumption (which includes residential, commercial, and industrial) that it must be a very high percentage. *See* respondent's submission dated March 3, 1998 at 2 and 3. For these reasons, we find that the rate for industrial users in the Guayana region of Venezuela is the most representative of the electricity prices AVISMA would pay if it were located in Venezuela.

Comment 2: The petitioner contends that Interlink's request for revocation did not properly comply with 19 CFR 351.222(e). Therefore, the petitioner concludes that the Department could not have legally revoked the order as per Interlink's request. According to the petitioner, Interlink's September 21, 1998, submission withdrawing its request for revocation prevented the Department from running afoul of its own regulations.

Interlink argues that its request for revocation complied with Department regulations, and the Department's September 8, 1998, preliminary notice of intent to revoke the finding in response to Interlink's request confirmed the correctness of Interlink's request. Moreover, Interlink claims that its withdrawal of request for revocation had nothing to do with the petitioner's argument that this withdrawal prevented the Department from running afoul of its regulations.

Department Position: On September 8, 1998, the Department preliminarily determined to revoke the finding on titanium sponge from Russia as it applies to Interlink. Due to Interlink's September 21, 1998 withdrawal of its request for revocation, we do not need to consider any arguments concerning Interlink's request for revocation.

Correction of Clerical Errors

The Department found two clerical errors in our August 31, 1998 analysis memorandum, which describes the methodology we used in calculating normal value and U.S. price in this administrative review. On page 3 of this memorandum, we discussed our calculation of selling, general and administrative (''SG&A'') expenses and profit. Specifically, we defined SG&A expenses to equal the surrogate SG&A ratio multiplied by the cost of manufacture. Similarly, we defined profit to equal the surrogate profit ratio multiplied by the sum of the cost of manufacture and SG&A expenses. In both definitions, the Department mistakenly used the term ''cost of manufacture'' when we should have used the term ''adjusted cost of manufacture.'' Because our actual calculations correctly used adjusted cost of manufacture, this clerical error had no effect on our normal value calculation.

Final Results of Review

In the preliminary results, the Department stated that we would confirm the information provided by AVISMA, Interlink, and TMC regarding the existence of sales of subject merchandise to the United States that were entered under temporary importation bond (''TIB''). *See* preliminary results at 47476. We contacted the Customs Service and confirmed that certain entries of subject merchandise manufactured by AVISMA, Interlink, and TMC entered the United States under TIB during the period of review. *See* Memorandum to the File, ''Customs Service Confirmation of Temporary Importation Bond Entries'', dated December 30, 1998.

For the reasons set out in the preliminary determination, and in the discussion of comments above, we determine that the following dumping margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Interlink Metals & Chemicals, S.A.	8/1/96–7/31/97	00.0
TMC Trading International, Ltd.	8/1/96–7/31/97	00.0
AVISMA Magnesium-Titanium Works	8/1/96–7/31/97	00.0
Russia-wide rate	8/1/96–7/31/97	83.96

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Since there were no sales with dumping margins, we will instruct Customs not to assess dumping duties on any shipments of subject merchandise exported by the above-referenced entities that entered the United States during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of titanium sponge from Russia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for subject merchandise manufactured and exported directly to the United States by AVISMA will be 0.00 percent; (2) the cash deposit rates for merchandise exported to the United States by Interlink Metals & Chemicals, S.A. and TMC Trading International, Ltd. will be 0.00 percent; (3) merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous administrative review and which have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (4) for Russian manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Russia-wide rate; and (5) the cash deposit rate for non-Russian exporters of subject merchandise from Russia that were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') in this review of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. *See* 63 FR 24391, 24403 (May 4, 1998). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: January 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–552 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122498A]

Taking and Importing of Marine Mammals; Yellowfin Tuna Imports

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

ACTION: Notification of affirmative finding.

SUMMARY: NMFS announces that the Government of Spain has submitted documentation establishing that it continues to be in compliance with the requirements of the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the eastern tropical Pacific Ocean (ETP). The Assistant Administrator for Fisheries (Assistant Administrator) has made an affirmative finding that will allow yellowfin tuna and tuna products harvested by vessels of Spain to be imported into the United States through December 31, 1999.

DATES: The affirmative finding for Spain is effective January 1, 1999, and remains in effect through December 31, 1999, unless revoked.

FOR FURTHER INFORMATION CONTACT: Cathy Eisele (phone 301–713–2322; fax 301–713–4060); or Allison Routt (phone 562–980–4019; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: NMFS regulations provide for the Assistant Administrator to make an affirmative finding for any nation that prohibits its vessels from intentionally setting purse seine nets on marine mammals (50 CFR 216.24(e)(5)). With an affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by that nation's purse seine vessels may be imported into the United States. The Assistant Administrator made such a finding at the end of 1997 for Spain.

On October 23 and December 3, 1998, the Government of Spain submitted reports on the activities of its purse seine vessels in the ETP during 1998. The reports indicate that one vessel intentionally set on marine mammals during the course of fishing for yellowfin tuna. As a result, Spain automatically entered into a 180-day probationary status, beginning on June 7, 1998, as required under 50 CFR 216.24(e)(5)(xi). No additional marine mammal sets were made during the 180-day probationary period, which ended on December 3, 1998. This information has been verified by observer reports from the Inter-American Tropical Tuna Commission. On December 24, 1998, after consultation with the Department of State, the Assistant Administrator determined that the Republic of Spain had submitted acceptable documentary evidence that its regulatory program continues to comply with the yellowfin tuna import regulations. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels may be imported into the United States through December 31, 1999.

Dated: January 5, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–530 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123098C]

Marine Mammals; Permit No. 855 (File No. P342C)

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. 855, issued to Mr. John Calambokidis, Cascadia Research Collective, Waterstreet Building, Suite 201, 218 ½ West Fourth Avenue, Olympia, WA, 98501, was amended.

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);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, Seattle, WA 981150070 (206/526–6426); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (562/980–4213).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 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).

The Holder is authorized to collect marine mammal tissue samples from Alaska Native subsistence hunts. This amendment authorizes the extension of the expiration date through December 31, 1999.

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 30, 1998.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–531 Filed 1–8–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Board of Trade Soybean Oil Futures Contract Regarding Locational Price Differentials, Maximum Limit on the Delivery Capacity That May Be Registered, and Allocation of Responsibility for Payment of Switching and/or Freight Costs

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to its soybean oil futures contract. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved 45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 10, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBT soybean oil futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The existing terms of the soybean oil futures contract provide for the delivery of warehouse receipts representing 60,000 pounds of crude soybean oil in store at CBT-approved (regular) delivery facilities. Regular delivery facilities must be located within a prescribed area consisting of all, or portions of, nine mid-western states of the U.S. The futures contract currently provides for delivery at par at regular delivery facilities located within the Illinois Territory (which consists of that portion of the state of Illinois located north of latitude 38°00′N.) and at specified locational price differentials at regular delivery facilities located within four other specified delivery territories within the contract's delivery area. The contract's current terms also provide for the adjustment of the locational price differentials annually for each of the four-non par territories. The annual adjustments are based on the ratio of the average number of outstanding registered warehouse receipts to the soybean crushing capacity for all facilities in the particular territory relative to the ratio of the number of outstanding registered warehouse receipts to soybean crushing capacity for all facilities in the other four delivery territories combined. The contract currently provides that the locational price differential for a given territory may be adjusted by a maximum of 10 cents per hundredweight per year.

The futures contract's existing terms require that the CBT approve the storage capacity eligible for delivery at each individual regular delivery facility. Currently, regular delivery facility operators may deliver soybean oil warehouse receipts equivalent to the maximum CBT-approved storage capacity for each of their individual warehouses. Upon surrender of a warehouse receipt, the delivery receiver may direct that the delivery soybean oil be loaded into railcars or trucks. The receiver is obligated to arrange for, and to pay all costs of, transportation of soybean oil from the delivery facility.

The primary proposed amendments will make the following changes: (1) The maximum yearly adjustment to the price differential applicable to delivery territories (other than the Illinois par territory) will be increased to 20 cents per hundredweight; (2) the futures delivery capacity (the maximum number of warehouse receipts that any delivery facility may have outstanding at any time) of each regular delivery facility will be limited to 30 times the facility's registered daily load-out rate and (3) operators of regular delivery facilities not located on Class I railroads will be required to pay switching and/or freight costs to the nearest Class I railroad interchange point, if requested in writing by the taker of delivery.

The CBT intends to implement the proposed amendments to newly listed contract months, commencing with the January 2000 contract month. The Exchange has listed for trading the January, July, October and December 2000 contract months with asterisks indicating that proposed amendments will be applied to these contract months, pending approval by the Commission.

In support of the proposed amendments, the CBT stated that:

> The purpose of the proposed amendments is to improve the pricing accuracy and hedging effectiveness of the soybean oil futures contract. This will be achieved by increasing the amount by which territorial delivery differentials can change each year, improving access to delivery stocks for takers

of delivery and compensating takers of delivery at facilities served by non-Class I railroads for the costs of moving the oil to a Class I railroad.

The CBT further submits that:

The proposed doubling of the maximum annual adjustment in delivery differentials will help ensure that the delivery differentials between territories reflect true cash market differentials. The proposal to limit delivery capacity to 30 times the daily load-out capacity for each regular facility will reduce the period of time over which load-out can occur and give takers of delivery quicker access to delivery stocks. Implementation of the new regulation requiring operators of delivery facilities which are not located on Class I railroads to pay the switching and/or freight costs for making the oil available on the nearest Class I railroad will improve the arbitrage process of the delivery system and facilitate convergence.

Commenters are requested to address the extent to which the proposed amendments reflect cash market practices or conditions. Specifically, will the proposed changes to the annual locational price differential adjustment allow for better conformity with prevailing cash market price differences between delivery territories. Also, will the proposed changes to the rail delivery procedures better reflect the relative value of soybean oil stored in facilities located on Class I railroads relative to soybean oil stored in facilities located on non-Class I railroads. In addition, commenters are requested to assess the overall effect of the proposed amendments on the supply of soybean oil likely to be available for delivery on the contract and whether the proposed amendments will have any effect on the futures contract's susceptibility to price manipulation or distortion.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at secretary@cftc.gov.

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 4, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–514 Filed 1–8–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Applications of the COMEX Division of the New York Mercantile Exchange for Designation as a Contract Market in Futures and Options on Aluminum

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The COMEX Division of the New York Mercantile Exchange has applied for designation as a contract market in aluminum futures and options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATE: Comments must be received on or before February 10, 1999.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Three Lafayette Centre, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521,or by electronic mail to secretary@cftc.gov. Reference should be made to the COMEX Division of the New York Mercantile Exchange ''aluminum'' futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5275. Facsimile number: (202) 418–5527. Electronic mail: rshilts@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the COMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 5, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–513 Filed 1–8–99; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to

provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from representatives of communities served by organizations that conduct community service activities under the sponsorship of Corporation grants. This information will be used by the Corporation to evaluate the nature and effectiveness of its national service programs.

Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 12, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Marcia Scott, Office of Evaluation, 1201 New York Avenue, N.W., 9th floor, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Marcia Scott, (202) 606–5000, ext. 100.

SUPPLEMENTARY INFORMATION:

Background

One of the missions of the Corporation is to ''provide opportunities to engage in service that addresses the nation's unmet human, educational, environmental, and public safety needs'' (42 U.S.C. 12501(b)). Through the AmeriCorps*State/National program, the Corporation supports the efforts of local, state and national organizations that engage American adults in results-driven community service. Community service efforts include, but are not limited to: providing tutoring and immunization services for pre-school through twelfth grade children, and recruiting and training volunteers in local communities to provide health and independent living assistance to community residents, housing assistance to the homeless, community policing activities, and services to reduce environmental risk.

The Corporation has placed a priority on evaluating the outcomes of these efforts. A primary goal of the Corporation is that communities will be made stronger through the services its programs provide. In addition to outcomes, key considerations in determining a number of policy and programming issues in Corporation programs are program impact and net societal benefit. This data collection will address not only the value that communities place on the outcomes achieved by national service programs, but also whether the outcomes would have occurred in the absence of the programs.

Current Action

The Corporation seeks approval of a survey form for the evaluation of the Corporation's AmeriCorps*State/National programs that it supports through grants. The survey will allow for the enhancement of the Corporation's future efforts in devising methods to measure progress toward its goals. It also may contribute important information to the knowledge base of the community service field by identifying essential program components that lead to valued outcomes and program effectiveness.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Assessment of the Value-added Effect of National Service Programs on the Communities They Serve.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps*State/National partner organizations and Community representatives including, leaders community groups, and service providers.

Total Respondents: Approximately 540.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 270 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: January 5, 1999.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 99–493 Filed 1–8–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 23, 1998, a 60-day notice inviting comment from the public was inadvertently published for the Advanced Placement Incentive Program in the **Federal Register** (63 FR 71110) dated December 23, 1998. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this notice amends the public comment period for this program to 30 days. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995. Since an incorrect public notice was published on December 23, the Department of Education is correcting the end date to the 30 days as required for discretionary grants instead of 60 days.

DATES: Interested persons are invited to submit comments on or before February 10, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the

proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196.

Dated: January 5, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

[FR Doc. 99–483 Filed 1–8–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–199]

Application To Export Electric Energy; Ontario Hydro

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Ontario Hydro has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 10, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 21, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Ontario Hydro to transmit electric energy from the United States to Canada. Ontario Hydro is the provincial electric utility within the Canadian Province of Ontario. Ontario Hydro does not own or control any generation and transmission facilities in the United States and does not have any franchised service territory in the United States.

The electric energy Ontario Hydro proposes to export will be surplus energy purchased from electric utilities in the U.S. Ontario Hydro intends to export this energy to Canada over the existing international transmission facilities owned by Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by Ontario Hydro, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Ontario Hydro application to export electric energy to Canada should be clearly marked with Docket EA–198. Additional copies are to be filed directly with Joan Prior, Esq., Acting Senior Vice President, General counsel & Secretary, Ontario Hydro, 700 University Ave., Toronto, Ontario, Canada N5G 1X6, and Peter M. Kirby, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC, 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menus.

Issued in Washington, D.C., on January 5, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–542 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–198]

Application To Export Electric Energy; Ontario Hydro Interconnected Markets Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Ontario Hydro Interconnected Markets Inc. (OHIM) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 10, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586-9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 21, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from OHIM to transmit electric energy from the United States to Canada. OHIM does not own or control any generation and transmission facilities in the United States and does not have any franchised service territory in the United States. OHIM is incorporated in the State of Delaware and is a wholly-owned subsidiary of Ontario Hydro, the provincial electric utility within the Canadian Province of Ontario.

The electric energy OHIM proposes to export will be surplus energy purchased from electric utilities in the U.S. OHIM intends to export this energy to Canada over the existing international transmission facilities owned by Citizens Utilities, Detroit Edison

Company, Eastern Maine Electric Cooperative, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by OHIM, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the OHIM application to export electric energy to Canada should be clearly marked with Docket EA–198. Additional copies are to be filed directly with Peter D. MacMillan, Esq., Secretary, Ontario Hydro Interconnected Markets Inc., 700 University Ave., Toronto, Ontario, Canada N5G 1X6, and Peter M. Kirby, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC, 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory'' and then ''Electricity'' from the options menus.

Issued in Washington, D.C., on January 5, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–541 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–06; Environmental Management Science Program: Research Related to Subsurface Contamination/Vadose Zone Issues

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy, hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support specifically innovative, fundamental research to investigate DOE surface contamination/vadose zone issues.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–06, should be received by DOE by 4:30 p.m. e.s.t., February 9, 1999. A response encouraging or discouraging a formal application generally will be communicated by electronic mail to the applicant within three weeks of receipt. The deadline for receipt of formal applications is 4:30 p.m., e.d.t., April 19, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: All preapplications, referencing Program Notice 99–06, should be sent to Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Preapplications will be accepted if submitted by U.S. Postal Service, including Express Mail, commercial mail delivery service, or hand delivery, but will not be accepted by fax, electronic mail, or other means.

After receiving notification from DOE concerning successful preapplications, applicants may prepare and submit formal applications. Applications must 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 99–06. The above address for formal applications must also be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, SC–73, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–9009, fax: (301) 903–0567, E-mail: roland.hirsch@science.doe.gov, or Mr. Mark Gilbertson, Office of Science and Risk Policy, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, DC 20585, telephone: (202) 586–7150, E-mail: mark.gilbertson@em.doe.gov. The full text of Program Notice 99–06 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Science, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996 and funding for the program has been provided in the Conference Report for Fiscal Year 1999 Appropriations for Energy and Water Development, Report 105–749, September 25, 1998, page 107.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development Program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire ''breakthroughs'' in areas critical to the EM mission through basic research and will be managed in partnership with SC. The Office of Science's well-established procedures, as set forth in the Office of Science Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10246, will be used for merit review of applications submitted in response to this notice.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained at http://www.em.doe.gov/science.

Additional Notices for the Environmental Management Science Program may be issued during Fiscal Year 1999 covering other areas within the scope of the EM program.

Purpose

The need to build a stronger scientific basis for the Environmental Management effort has been established in a number of recent studies and reports. The Galvin Commission report (''Alternative Futures for the Department of Energy National Laboratories,'' February 1995) also provided the following observations and recommendations:

''There is a particular need for long term, basic research in disciplines related to environmental cleanup'' * * * ''Adopting a science-based approach that includes supporting development of technologies and expertise'' * * * ''could lead to both reduced cleanup costs and smaller environmental impacts at existing sites and to the development of a scientific foundation for advances in environmental technologies.''

The Environmental Management Advisory Board Science Committee (Resolution on the Environmental Management Science Program, May 2, 1997) made the following observations:

''EMSP results are likely to be of significant value to EM'' * * * ''Early program benefits, include: improved understanding of EM science needs, linkage with technology needs, and expansion of the cadre of scientific personnel working on EM problems'' * * * ''Science program has the potential to lead to significant improvement in future risk reduction and cost and time savings.''

The purpose of the EMSP is to foster basic research that will contribute to successful completion of DOE's mission to cleanup the environmental contamination across the DOE complex.

The objectives of the Environmental Management Science Program are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks;
- ''Bridge the gap'' between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

''Although the focus of the EMSP is on basic research, as noted above, the objective of this research program is to generate new knowledge to support DOE's mission to remediate its contaminated sites. Some of the Department's most significant contamination problems involve soil and groundwater that contain dense nonaqueous-phase liquids, metals, and radionuclides. The Department's ability to identify and quantify contaminant sources, predict and monitor contaminant fate, and carry out appropriate remediation remains elusive at many sites across the DOE complex.'' (National Research Council, Committee on Subsurface Contamination at DOE Complex Sites: Research Needs and Opportunities, December 10, 1998).

Representative Research Areas

Basic research is solicited in all areas of science with the potential for addressing problems in subsurface contamination and transport processes in the vadose (unsaturated) zone. Processes and problems in the vadose zone constitute important subjects of concern to the Department's Environmental Management Program. Relevant scientific disciplines include, but are not limited to: Geological sciences, (including geochemistry, geophysics, hydrogeologic transport modeling, and hydrologic field-studies), plant sciences (including mechanisms of contaminant uptake, concentration and sequestration), chemical sciences (including fundamental interfacial chemistry, computational chemistry, actinide chemistry, and analytical chemistry and instrumentation), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics and bioengineering), materials science (including other novel materials-related strategies), and bioremediation (including microbial science related to ex situ treatment of organics, metals and radionuclides and in situ treatment of organics). The Natural and Accelerated Bioremediation Research (NABIR) program of the Office of Biological and Environmental Research in the Office of Science may issue a Notice relating to in situ treatment of metals and radionuclides during FY 1999. Research projects relating to this area should be submitted to NABIR rather than to EMSP.

Program Funding

It is anticipated that up to a total of $4,000,000 of Fiscal Year 1999 Federal funds will be available for new Environmental Management Science Program awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers. All projects will be evaluated using the same criteria, regardless of the submitting institution. Additionally, relevant innovative basic research pertaining to other sites will be considered.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Preapplications

A brief preapplication may be submitted. The original and five copies must be received by January 28, 1999, to be considered. The preapplication should identify on the cover sheet the institution, PI name, address, telephone, fax and E-mail address for the principal investigator, title of the project, and the field of scientific research (using the list in the Application Categories section). The preapplication should consist of up to three pages of narrative describing the research objectives and the plan for accomplishing them, and should also include a paragraph describing the research background of the principal investigator and key collaborators if any.

Preapplications will be evaluated relative to the scope and research needs

of the DOE's Environmental Management Science Program by qualified DOE program managers from both SC and EM. Preapplications are strongly encouraged but not required prior to submission of a full application.

Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- SC Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation. Applicants are requested to include in the travel budget for each year funds to attend the annual National Environmental Management Science Program Workshop, and also for one or more extended (one week or more) visits to a cleanup site by either the Principal Investigator or a senior staff member or collaborator.
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages)
- Goals
- Significance of Project to the EM Mission
- Background
- Research Plan
- Preliminary Studies (if applicable)
- Research Design and Methodologies
- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories

In order to properly classify each preapplication and application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research:

1. Actinide Chemistry
2. Analytical Chemistry and Instrumentation
3. Bioremediation
4. Engineering Sciences
5. Geochemistry
6. Geophysics
7. Hydrogeology
8. Interfacial Chemistry
9. Materials Science
10. Plant Science
11. Other

Application Evaluation and Selection

Scientific Merit. The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal 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.

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.

Relevance to Mission. ''Researchers are encouraged to demonstrate a linkage between their research projects and significant contamination problems at DOE sites. Researchers could establish this linkage in a variety of ways—for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could improve remediation capabilities. Of course, given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.'' (National Research Council, Board on Radioactive Waste Management, December 1998) Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program.

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Year 1996, Fiscal Year 1997, and Fiscal Year 1998 can be viewed at *http://www.doe.gov/em52/science-grants.html.*

Application Guide and Forms

Information about the development, submission of applications, eligibility, limitations, evaluation, the 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.*

Major Environmental Management Challenges

This research Notice has been developed for Fiscal Year 1999, along with a development process for a long-term program within Environmental Management, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. The following is an overview of the technical challenge facing the Environmental Management Program in the area of Subsurface Contamination/Vadose Zone which is the focus of this Notice. More detailed descriptions of the specific technical needs and areas of emphasis associated with this problem area can be found in the background section of this Notice.

Subsurface Contamination/Vadose Zone environmental problems associated with hazardous and radioactive contaminants in soil and groundwater that exist throughout the Department of Energy complex, include radionuclides, heavy metals, and dense, nonaqueous phase liquids. More than 5,700 known Department of Energy groundwater plumes have contaminated over 600 billion gallons of water and 50 million cubic meters of soil. Migration of these plumes threaten local and regional water sources and in some cases, has already adversely impacted off-site resources. In addition, the Department is responsible for the remediation of numerous landfills at Department facilities. These landfills are estimated to contain over three million cubic meters of radioactive and hazardous buried waste, some of which has migrated to the surrounding soils and groundwater. Currently available

cleanup technologies are inadequate or unacceptable due to excessive costs, increased risks, long schedules, or the production of secondary waste streams. A window of opportunity is thus provided for EMSP to inject new innovative research to help bridge the technological gap pertaining to the challenges in:

- Subsurface measurements, characterization and transport validation (distribution of contaminants) in soils and fractured rock
- Hydrology and geochemistry effects, including contaminant migration velocity, and immobilization applications
- Groundwater characterization and contaminant breakthrough models
- Surface water toxological cumulative effects
- Inventory estimates and validation

Scientific Issues

Recognized issues that pose challenges in inventories of the subsurface, vadose zone, groundwater, and surface water include:

Subsurface

- Complete estimates of chemical and radiological contaminant concentrations, volumes, and timing of releases need to be considered holistically.
- Model assumptions on distribution of contaminants among different waste processes and streams have not been extensively validated by measurement.
- Models of contaminant distribution are not sufficiently focused on a prioritized list of key chemical and radionuclide contaminants.
- Development of systems assessment capability involves integration of observations of contaminant distributions over a variety of spatial and temporal scales.
- Knowledge of mechanisms and rates of waste release important for system assessment.

Vadose Zone

- Spatial and depth distribution of inventory, its phase association and chemical speciation are not fully known.
- In-situ chemical/physical/hydraulic properties of sediments are not well characterized.
- Chemical and biologic reactions responsible for contaminant retardation, immobilization, and mobilization are insufficiently understood or lack data on key parameters.
- Geohydrochemical effects such as chemical dissolution, clay dispersion, piping, colloid transport are not fully known.
- Preferred hydrologic pathways are not well characterized.
- Credible reactive transport models that include heterogeneity are not available.

Groundwater

- Waste volumes, waste chemistry, timing of waste disposal, and vadose zone transport are not fully characterized to provide accurate flux from vadose zone into groundwater.
- Horizontal and vertical dimensions of contaminant plumes are not fully delineated.
- Plume structure near waterways is important to characterize.
- Variation in plume geometry due to important geologic features and temporal changes in recharge/migration can answer key questions.
- Contaminant transport and impacts of non-aqueous phase liquids in aquifer are not fully described.
- Innovative, low-cost characterization approaches to extending subsurface data are not routinely deployed.

Surface Water

- Types, amounts, and spatial locations of contaminants within and entering waterways are not fully characterized.
- Temporal variation in contaminant input at groundwater discharge sites is not fully characterized.
- Extent of exposures of sensitive biota to contaminants is not known.
- Toxicological impacts on exposed species are insufficiently understood.
- Fate and transport modeling capabilities are not fully descriptive.

Inventory technical element

- Estimates of radionuclides and chemical contaminants that have been or are expected to be released to the vadose zone (location, amount, concentrations, chemical form, and mobilization/release mechanisms are needed as input to a system assessment).
- Needed are complete estimates of chemical and radiological contaminant concentrations, and volumes.
- Methodologies to validate model assumptions are needed for determining the distribution of contaminants among different waste processes and streams.

Background

The DOE has a 50-year legacy of environmental problems resulting from the production of nuclear weapons. Among the most serious are the widespread contamination of soils, sediments, and groundwater. Moreover, many of the contaminated soils, sediments, and groundwater are believed to be impossible to remediate with existing technology. Examples of sites with these intractable problems include the Snake River Aquifer in Idaho, contaminated groundwater at the 100, 200, and 300 areas at Hanford, Washington, Oak Ridge/Savannah River groundwaters and contaminated sediments at the Nevada Test Site. The huge cost, long duration, and technical challenges associated with remediating DOE facilities present a significant opportunity for science to contribute cost-effective solutions. DOE's environmental remediation problems are shared by other federal agencies and the private sector, but DOE faces a unique set of challenges associated with complex mixtures of contaminants especially those mixtures that contain radioactive elements. While the emphasis in the following discussion is on the Hanford Site, it is anticipated that basic research addressing these problems could lead to new technologies with widespread impact across the complex.

The total life cycle costs for the Office of Environmental Management cleanup projects have been estimated to be approximately $147 billion in the year 2007 and beyond, when EMSP research results have the potential to begin making a significant impact. In that time period remedial action projects are estimated at $6.1 billion (DOE, April 1998).

The Hanford Site has a high number of remedial action projects with the largest mortgage and covers 1450 square kilometers along the Columbia River in southeastern Washington State. The primary mission of the Hanford Site for nearly 50 years was to produce plutonium for national defense. Since 1943, nine plutonium production reactors, seven chemical separations plants, and various ancillary facilities were constructed and operated at the Hanford Site, with peak defense production activities occurring in the 1950s and early 1960s during the Cold War. Plutonium production, fuel processing, and fuel fabrication had a significant effect on the environment. The Hanford Site contains over 1600 contaminated waste sites; 670 occur within one half mile of the Columbia River. Defense production created over 625,000 cubic meters of solid/liquid wastes containing both radioactive and chemical contamination. Early waste disposal practices have resulted in groundwater contamination levels exceeding federal drinking water standards (DWS). Additional information on the subsurface contamination/vadose zone problems at

the Hanford Site can be found in the Richland Environmental Restoration Project, ''Groundwater/Vadose Zone Integration Project Specification'', DOE/RL–98–48, Review Draft C, Appendix H, Applied Science and Technology Plan, and Appendix I, Science and Technology Roadmap on the world wide web at: http://www.bhi-erc.com/vadose/pubrev.htm. For further information regarding the Hanford Site please contact Mr. James P. Hanson, U.S. Department of Energy, Richland Operations Office, Science and Technology Programs Division, PO Box 550, MSIN K8–50, Richland, WA 99352, phone: (509) 372–4503, E-mail: james__pG7Xhanson@rl.gov.

The Department is also concerned with its ability to confirm the performance of behavior of a physical, chemical, or geological process or a technology at a contaminated site. ''Basic science can contribute to performance validation through the investigation and development of new or improved tools and methodologies for confirming behavior or performance in the field. There are a number of underlying theoretical and experimental issues of interest—for example, understanding the pre-remediation conditions at a contaminated site and the fundamental hydrogeological, chemical, and biological controls on site or contaminant behavior, how these change during site remediation, and which tests or measurements are sensitive to the behaviors of concern. The inability to confirm such behavior or performance at a contaminated site is one of the primary reasons for the Department's difficulty in prescribing appropriate and cost-effective remediation and monitoring strategies. Moreover, once a remediation action is underway, the Department often lacks methods to measure and confirm the efficacy of the approach. Deployment of new remediation technologies may depend to a great extent on the Department's ability to validate their effectiveness—and provide evidence of remediation efficacy to regulators and other stakeholders.'' (National Research Council, Committee on Subsurface Contamination at DOE Complex Sites: Research Needs and Opportunities, December 10, 1998).

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by Environmental Management Program can be found on the World Wide Web at http://www.em.doe.gov and at the extensive links contained therein. The programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE. 1998. Accelerating Cleanup: Paths to Closure—June 1998. http://www.em.doe.gov/closure

DOE. 1998. Environmental Science Program, 1998 Project Summaries—June 1998. http://www.doe.gov/em52

DOE. 1998. Report to Congress on the U.S. Department of Energy's Environmental Management Science Program—April 1998. http://www.doe.gov/em52/rtc.html

DOE. 1997. Research Needs Collected for the EM Science Program—June 1997. http://www.doe.gov/em52/needs.html

DOE. 1995. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, D.C. http://www.em.doe.gov/circle/index.html

Environmental Management Advisory Board Science Committee. 1997. Resolution on the Environmental Management Science Program dated May 2, 1997.

National Research Council. 1998. Interim Letter Report, Committee on Subsurface Contamination at DOE Complex Sites: Research Needs and Opportunities, dated December 10, 1998.

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. http://www.nap.edu/readingroom/books/envmanage/

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, D.C. http://www.nap.edu/readingroom/books/doeemp/

Richland Environmental Restoration Project, Groundwater/Vadose Zone Integration Project http://www.bhi-erc.com/vadose/pubrev.htm

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on alternative Futures for the Department of Energy National Laboratories. Washington, D.C. http://www.doe.gov/html/doe/whatsnew/galvin/tf-rpt.html

1999 Hanford Site Technology Needs http://www.pnl.gov/stcg/needs.stm

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 January 4, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–543 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Tuesday, January 19, 1999, 6:30 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College) 3705 West 112th Avenue Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Board will continue its discussions of waste management and other issues related to developing a vision for the closure of Rocky Flats.

2. The Board will review and consider a final statement and draft comments on aspects relating to its previous discussions of transporting to and storing waste at the WIPP site.

3. Staff will present the Board ''slideshow,'' in development for the past few months, and ask for final approval of the script.

4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 5, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–548 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES:

Monday, January 25, 1999:
- 6:00 p.m.–6:30 p.m.: Public Comment Session
- 6:30 p.m.–7:00 p.m.: Joint Subcommittee Session—Tentative
- 7:00 p.m.–9:00 p.m.: Individual Subcommittee Meetings

Tuesday, January 26, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Holiday Inn, 1 South Forest Beach Drive, Hilton Head, South Carolina 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, January 25, 1999

6:00 p.m. Public comment session (5-minute rule)
6:30 p.m. Joint subcommittee session (tentative)
7:00 p.m. Issues-based subcommittee meetings
9:00 p.m. Adjourn

Tuesday, January 26, 1999

8:30 a.m. Approval of minutes, agency updates (~ 15 minutes)
- Public comment session (5-minute rule) (~ 10 minutes)
- Nuclear materials management subcommittee (~ 1 hour)
- Risk management & future use subcommittee report (~ 30 minutes)
- Environmental remediation and waste management subcommittee report (~ 2 hours)

12:15 p.m. Lunch
- Environmental restoration program (~ 45 minutes)
- Administrative subcommittee report (~ 30 minutes)
- —Subcommittee chair elections
- —Presentation of 1999 membership candidates
- Facilitator update (~ 30 minutes)
- Technology deployment workshop/Oak Ridge visit (~ 15 minutes)
- TNX tour/early warning monitoring system (~ 15 minutes)
- Outreach subcommittee report (~ 15 minutes)
- Public comment session (5-minute rule) (~ 10 minutes)

4:00 p.m. Adjourn

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, January 25, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on January 5, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–549 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory

DATES: Wednesday, January 27, 1999: 6:00 p.m.–9:00 p.m., 6:30 p.m. to 7:00 p.m. (public comment session).

ADDRESSES: Pueblo of Nambé Governor's Office New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Call to Order by DOE
6:00 p.m. Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m. Public Comments
7:00 p.m. Break

7:15 p.m. Board Business
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on January 6, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–550 Filed 1–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–113–000]

Algonquin LNG, Inc., Notice of Intent To Prepare an Environmental Assessment for the Proposed ALNG Plant Modifications Project and Request for Comments on Environmental Issues

January 5, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the ALNG Plant Modifications Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement (EIS) is necessary and whether to approve the project. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

Summary of the Proposed Project

In a previous application filed on May 13, 1996, in Docket No. CP96–517–000, Algonquin LNG, Inc. (ALNG) requested authorization to modify its Providence, Rhode Island liquefied natural gas (LNG) facility, to add pipeline facilities to connect the ALNG Plant directly to Algonquin Gas Transmission Company (AGT), and to add liquefaction facilities at the ALNG Plant. Specifically, ALNG proposed the construction of a liquefaction facility, LNG pumps and vaporizers, boil-off gas compressors, 1.05 miles of 20-inch-diameter pipeline, 0.25 mile of 10.75-inch-diameter pipeline, metering facilities, and miscellaneous facilities including a water/glycol system, feed gas compressors, odorant injection, control systems, and fire protection system additions. ALNG also proposed to inspect the existing 600,000-barrel LNG storage tank and to install new instrumentation; to acquire two existing 0.45-mile-long, 10.75-inch-diameter pipeline crossings of the Providence River; and to abandon three existing vaporizers and related facilities.

The Commission issued an Order Authorizing Certificates on May 6, 1997, and on May 5, 1998, issued an Order on Rehearing. During the processing of Docket No. CP96–517, market conditions changed so significantly that ALNG was unable to accept the authorization.

ALNG now proposes a scaled-back, lower-cost version of that project. The facility changes proposed herein would occur completely within the existing ALNG Plant site and would require no offsite construction as in the previously proposed project.

ALNG seeks Commission authorization to modernize its existing LNG facility in Providence, Rhode Island. The proposed modifications would include:

- Abandoning the three existing direct-fired LNG vaporizers, and installing three new horizontal indirect-fired 150 million standard cubic feet per day (MMscfd) LNG vaporizers;
- Increasing the capacity of the existing LNG pumps from 100 MMscfd to 150 MMscfd;
- Installing two new 600 horsepower boiloff gas compressors consisting of flooded screw type compressors driven by fixed speed electric motors;
- Installing additional emergency power generation equipment, control systems, and safety systems; and
- Modifying metering facilities for the delivery of vaporized LNG and boiloff gas.

The proposed facilities would allow ALNG to continue to provide LNG storage, LNG truck loading and unloading, and LNG vaporization services on a firm and interruptible non-discriminatory open access basis.

A location map of the proposed ALNG Plant Modifications Project is shown in appendix 1.[2]

Existing Facilities

ALNG owns and operates a 600,000-barrel LNG storage facility on the west side of the Providence River. The facility has been in operation for over 20 years, and is exclusively supplied with LNG delivered by truck. Upon demand, LNG is either redelivered in liquid form into trucks supplied by its customers, or vaporized into Providence Gas Company's (PGC) distribution system.

Land Requirements for Construction

The proposed ALNG Plant Modifications Project would be contained within the existing 16.5-acre ALNG site. No facilities would be constructed along the waterfront or within 400 feet of the Providence River. The majority of the ground disturbance would be related to foundation construction for the proposed facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA and whether an EIS is necessary. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

[1] Algonquin LNG, Inc's application was filed with the Commission under Section 7 of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 5 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ALNG. This preliminary list of issues may be changed based on your comments and our analysis.

- Air quality may be affected by the replacement of the vaporizers and the addition of a second emergency generator.
- Noise quality may be affected by the replacement of the vaporizers and addition of the new emergency generator and boiloff compressors.
- Soils (possibly contaminated) may be affected by minor ground disturbance from foundation construction. The site owner, PGC, is currently conducting soil remediation on this site.
- In order to address public safety, proposed facility modifications will be analyzed to ensure compliance with the U.S. Department of Transportation's ''Liquefied Natural Gas Facilities: Federal Safety Standards'' (40 CFR 193).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Reference Docket No. CP99–113–000.
- Mail your comments so that they will be received in Washington, DC on or before February 4, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–463 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ97–3–005]

Bonneville Power Administration; Notice of Filing

January 5, 1999.

Take notice that on December 18, 1998, Bonneville Power Administration (BPA), tendered for filing its Open Access Transmission Tariff. BPA has also filed a Point-to-Point Transmission Rate Schedule and a Reserved Non-firm Transmission Rate Scheduled, with revisions to Section J of such schedules to conform to the Commission's July 21, 1998, order. Further BPA has submitted minor edits to its service agreements.

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 January 14, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–512 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–173–002; 0A97–455–002 and OA97–590–002; OA97–423–002 and OA97–594–002; and OA97–294–002]

Cambridge Electric Light Company and Commonwealth Electric Company; Idaho Power Company; PP&L, Inc.; Potomac Electric Power Company; Notice of Filing

January 5, 1999.

Take notice that on December 14, 1998, Cambridge Electric Light Company and Commonwealth Electric Company submitted a letter in Docket No. OA97–173–002 to notify the Commission that they have posted revised organizational charts and job descriptions on their OASIS to comply with the Commission's November 13, 1998 order on standards of conduct.[1]

On December 18, 1998, PP&L, Inc. submitted revised standards of conduct in Docket Nos. OA97–423–002 and OA97–594–002 in response to the November 13, 1998 order.

The November 13, 1998 order accepted the standards of conduct submitted by Idaho Power Company and Potomac Electric Power Company but required them to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

Any person desiring to be heard or to protest the filings or the posting should file, in each particular proceeding and referencing the appropriate docket number(s), a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before January 19, 1999. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–510 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Alliant Services, Inc. *et al.*, 85 FERC ¶ 61,227 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–004]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

January 5, 1999.

Take notice that on December 28, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

ITS–2 Service Agreement No. 61641 Between Columbia Gulf Transmission Company and Entergy Louisiana Inc., dated October 7, 1998.

Amendment to ITS–2 Service Agreement No. 61641 between Columbia Gulf Transmission Company and Entergy Lousiana Inc., dated December 22, 1998.

The service agreement and amendment related to a specific negotiated rate transaction between Columbia Gulf and Entergy Louisiana Inc. Columbia Gulf requests a retroactive effective date of December 1, 1998 for the negotiated rate agreement and amendment.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 12, 1999. 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. 99–457 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–195–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 5, 1999.

Take notice that on December 31, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective February 1, 1999:

Thirteenth Revised Sheet No. 6

Equitrans states that its filing is a limited Section 4 filing under the Commission's Regulations. Equitrans states that the purpose of this filing is to implement an increased volumetric products extraction rate to be assessed against the quantities of Appalachian gas which receive processing on the Equitrans system. Equitrans proposes an extraction rate of $0.1841/Dth.

Equitrans states that it contracts for the processing of Appalachian gas supplies received in its West Virginia field system with Gulf Energy Gathering and Processing, L.L.C. Equitrans states that the proposed extraction rate is based on the annualized actual operating costs of the processing plants incurred by Gulf Energy during 1998, and the actual throughput experienced at the plants over the prior 12 months. Equitrans states that this filing comports with the practice of reflecting changes in products extraction costs on an annual basis as approved by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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. 99–459 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–19–000]

Kentucky Utilities Company; Notice of Application

January 5, 1999.

Take notice that on December 22, 1998, Kentucky Utilities Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $250,000,000 of short-term debt on or before November 30, 2000 with a final maturity no later than November 30, 2001.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before January 15, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons 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. 99–466 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–193–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

January 5, 1999.

Take notice that on December 30, 1998, KN Interstate Gas Transmission Co. (KNI) tendered for filing its annual reconciliation filing pursuant to Section 27 (Crediting of Excess Rate Schedule IT Revenue); Section 28 (Crediting of Excess Fixed Storage Cost Revenue); Section 34 (Crediting of Out of Path Zone Revenue); and Section 35 (Crediting of Imbalance Revenue) of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1–B. In addition, KNI submits herein its annual reconciliation filing with respect to the Buffalo Wallow system pursuant to Section 31 (Crediting of Excess Rate Schedule IT Revenue) of its FERC Gas Tariff, First Revised Volume No. 1–D.

KNI states that copies of this filing has been served upon all affected firm customers of KNI and applicable state 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 on or before January 12, 1999. Protests will be considered by the Commission in determining the appropriate action to the 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. 99–458 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–139–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 5, 1999.

Take notice that on December 29, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–139–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct new delivery facilities, located in Ascension Parish, Louisiana, to serve Air Liquide American Corporation (Air Liquide), an end user, under Koch Gateway's blanket certificate issued in Docket No. CP82–430,000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install a delivery tap on its existing transmission line, designated as Index 130–45, located in Ascension Parish. Koch Gateway states that it plans to construct a six-inch tap, a dual two and four-inch meter station, and approximately 1,100 feet of eight-inch pipeline to connect Air Liquide's industrial plant.

Koch Gateway declares that these facilities will satisfy Air Liquide's request for transportation service. Koch Gateway asserts that such transportation service will be provided under Koch Gateway's Firm Transportation Service Rate Schedule. Koch Gateway states that Air Liquide estimates the maximum peak day volumes to be delivered at 15,000 MMBtu. Koch Gateway declares that it will transport the volumes under its blanket certificate issued in Docket No. CP88–6–000.

Koch Gateway states that the estimated cost of constructing the proposed facilities is $300,000.

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 from 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. 99–464 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–18–000]

MDU Resources Group, Inc., Notice of Application

January 5, 1999.

Take notice that on December 18, 1998, MDU Resources Group, Inc. (Applicant), a corporation organized under the laws of the State of Delaware and qualified to transact business in the States of Montana, North Dakota, South Dakota, and Wyoming, with its principal business office at Bismarck,

North Dakota, filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking authority to issue a combination of securities not to exceed in the aggregate $400,000,000 within the following amounts:

(1) Not to exceed $400,000,000 worth of common stock;

(2) Not to exceed $40,000,000 worth of preferred stock; and

(3) Not to exceed $120,000,000 principal amount of New Mortgage Bonds, Senior Notes, debentures, subordinated debentures, guarantees or other unsecured debt securities, including those in connection with a hybrid securities financing.

Applicant may vary the maximum issuance amount for each of the above types of securities so long as the aggregate amount of Applicant's securities issued does not exceed $400,000,000. The securities are proposed to be issued from time to time over a two-year period.

Applicant seeks approval for the issuance of all of the above securities by methods which may include other than competitive bidding and negotiated offers, as expressly permitted by section 34.2(a)(3)(iii) of the regulations under the Act.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before January 15, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Application is on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–465 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–0–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 5, 1999.

Take notice that on December 31, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective January 1, 1999.

Fifteenth Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 10.37 cents per dth.

Further, National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (''IG'') rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 9 cents per dth.

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. 99–462 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–248–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

January 5, 1999.

Take notice that on December 23, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 11, 1998:

Substitute Fourth Revised Sheet No. 274
Substitute Original Sheet No. 274–A
Substitute Fourth Revised Sheet No. 275
Substitute Second Revised Sheet No. 276
Substitute Third Revised Sheet No. 277
Substitute Second Revised Sheet No. 278
Substitute Original Sheet No. 278–A
Original Sheet No. 278–B
Original Sheet No. 278–C

Northwest states that the purpose of this filing is to comply with the Commission's December 10, 1998, Order Following Technical Conference related to Northwest's procedures for awarding available capacity, for reserving capacity for upcoming expansion projects, and for amending receipt and/or delivery points.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 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. 99–456 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–196–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

January 5, 1999.

Take notice that on December 31, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet with the proposed effective date of January 1, 1999:

Tariff Sheets Applicable to Contesting Parties

Forty Fourth Revised Sheet No. 14
Sixty Fifth Revised Sheet No. 15
Forty Fourth Revised Sheet No. 16
Sixty Fifth Revised Sheet No. 17

Tariff Sheets Applicable to Settling Parties

Thirtieth Revised Sheet No. 14a
Thirty Sixth Revised Sheet No. 15a
Thirtieth Revised Sheet No. 16a
Thirty Sixth Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN Southern Energy Costs Surcharge, due to a decrease in the FERC interest rate effective January 1, 1999.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

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 § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 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. 99–460 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 5, 1999.

Take notice that on December 30, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective February 1, 1999:

Thirtieth Revised Sheet No. 10
Thirteenth Revised Sheet No. 10A
Twenty-seventh Revised Sheet No. 11
Fourteenth Revised Sheet No. 11B

Taxas Gas states that the filing reflects the expiration of the Miscellaneous Revenue Credit Adjustment and ISS Revenue Credit (Docket No. TM98–3–18–000) originally filed on December 30, 1997, and approved by the Commission is its Letter Order dated January 21, 1998.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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. 99–511 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–49–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 5, 1999.

Take notice that on December 31, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second revised Volume No. 1, and Original Volume No. 2, the following revised tariff sheets to become effective February 1, 1999:

Second Revised Volume No. 1

Thirty-first Revised Sheet No. 15
Thirteenth Revised Sheet No. 15A
Thirty-fourth Revised Sheet No. 16
Thirteenth Revised Sheet No. 16A
Thirtieth Revised Sheet No. 18
Thirteenth Revised Sheet No. 18A
Thirteenth Revised Sheet No. 19
Thirteenth Revised Sheet No. 20
Twenty-seventh Revised Sheet No. 21

Original Volume No. 2

Seventy-fifth Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

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 § 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. 99–461 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6559–014]

H. Bruce Cox; Notice of Availability of Final Environmental Assessment

January 5, 1999.

A Final environmental assessment (FEA) is available for public review. The FEA examines the proposed revocation of exemption from licensing for the Cox Lake Dam Project. The FEA finds that the proposed revocation would not constitute a major federal action significantly affecting the quality of the human environment. The Cox Lake Dam Project is located in Randolph County, North Carolina, near the town of Cedar Falls.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Reference and

Information Center, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager, Pete Yarrington, at (202) 219–2939.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–467 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11638–000.

c. *Date Filed:* November 18, 1998.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Muskingum L&D #8 Hydroelectric Project.

f. *Location:* On the Muskingum River at river mile 57.4 in Morgan County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All ducuments (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project would consist of the following facilities: (1) the existing 20-foot-high 525-foot-long Muskingum Lock and Dam No. 8; (2) an existing 615-acre reservoir at normal pool elevation of 653.11 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 2,350 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 15,000 MWh and that the cost of the studies under the permit would be $1,500,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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, 385.211, 385.214. 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.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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. 99–454 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11639–000.

c. *Date Filed:* November 18, 1998.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Muskingum L&D #5 Hydroelectric Project.

f. *Location:* On the Muskingum River at river mile 34.1 in Washington County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all interveners filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would consist of the following facilities: (1) the existing 19.7-foot-high, 546-foot-long Muskingum Lock and Dam No. 5; (2) an existing 328-acre reservoir at normal pool elevation of 621.72 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 2,200 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 14,000 MWh and that the cost of the studies under the permit would be $1,000,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the proposective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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, 385.211, 385.214. In determing 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application

or 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. 99–455 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

January 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11637–000.

c. *Date Filed:* November 18, 1998.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Muskingum L&D #9 Hydroelectric Project.

f. *Location:* On the Muskingum River at river mile 68.6 in Muskingum County, Ohio.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. *Deadline for filing comments, notions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The project would consist of the following facilities: (1) the existing 18.1-foot-high, 730-foot-long Muskingum Lock and Dam No. 9; (2) an existing 533-acre reservoir at normal pool elevation of 664.12 feet msl; (3) a new powerhouse on the tailrace side of the dam with a total installed capacity of 1,800 kW; (4) a new 12.7 or 14.7 kV transmission line; and (5) other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

Applicant estimates that the average annual generation would be 11,000 MWh and that the cost of the studies under the permit would be $1,250,000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commissions' Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

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A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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, 385.211, 385.214. 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.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, 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, NE,

Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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. 99–468 Filed 1–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

January 6, 1999.

The following notice of meeting is published pursuant to section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 13, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 711th Meeting—January 13, 1999—Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–10624, 020, French Paper Company
CAH–2.
Docket# P–10661, 035, Indiana Michigan Power Company
CAH–3.
Docket# P–11402, 023, City of Crystal Falls, Michigan
CAH–4.
Docket# UL96–18, 002, Hubbardston Hydro Company

Consent Agenda—Electric

CAE–1.
Docket# ER99–705, 000, Golden Spread Electric Cooperative, Inc.
CAE–2.
Docket# ER99–723, 000, Florida Power & Light Company
Other#S EL99–19, 000, Seminole Electric Cooperative, Inc.
CAE–3.
Docket # ER99–669, 000, SEI Wisconsin, L.L.C.
CAE–4.
Omitted
CAE–5.
Docket# ER99–196, 000, PJM Interconnection, L.L.C.
CAE–6.
Docket# ER98–4600, 000, New York State Electric & Gas Corporation, Pennsylvania Electric Company and Mission Energy Westside, Inc.
CAE–7.
Docket# ER99–637, 000, Koch Power Louisiana, L.L.C.
CAE–8.
Docket# ER99–647, 000, PJM Interconnection, L.L.C.
CAE–9.
Docket# ER99–666, 000, EME Homer City Generation, L.P.
CAE–10.
Docket# ER99–540, 000, Pacific Gas and Electric Company
CAE–11.
Docket# ER97–3561, 000, Virginia Electric and Power Company
CAE–12.
Docket# ER96–108, 001, Duke/Louis Dreyfus, L.L.C.
Other#S ER96–109, 002, Duke Energy Marketing Corporation; ER96–110, 001, Duke Power Company
CAE–13.
Docket# EC98–64, 000, New York State Electric & Gas Corporation, NGE Generation, Inc., Pennsylvania Electric Company and Mission, Energy Westside, Inc.
CAE–14.
Docket# EL99–2, 000, Illinois Municipal Electric Agency v. Illinois Power Company
CAE–15.
Docket# EL99–4, 000, M–S–R Public Power Agency, Modesto Irrigation District, City of Santa Clara, California and City of Redding, California
CAE–16.
Docket# OA97–519, 003, Bangor Hydro-Electric Company
Other#s OA97–121, 002, Orange & Rockland Utilities, Inc.; OA97–419, 002, Cinergy Corporation, Cincinnati Gas & Electric Company and PSI Enger, Inc.; OA97–439, 004, Virginia Electric and Power Company; OA97–444, 002, Vermont Electric Power Company, Inc.; OA97–451, 002, Central Illinois Light Company and QST Energy Trading, Inc.; OA97–485, 003, UGI Utilities, Inc.; OA97–596, 003, Central Illinois Light Company and QST Energy Trading, Inc.; OA97–597, 002, United Illuminating Company

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP99–185, 000, CNG Transmission Corporation
CAG–2.
Docket# RP99–182, 000, Trunkline Gas Company
CAG–3.
Docket# RP99–183, 000, Viking Gas Transmission Company
CAG–4.
Omitted
CAG–5.
Docket# RP99–157, 000, Destin Pipeline Company, L.L.C.
CAG–6.
Docket# RP99–133, 000, Mississippi River Transmission Corporation
CAG–7.
Docket# RP98–206, 004, Atlanta Gas Light Company
CAG–8.
Docket# SA98–9, 001, M.A. Calvin
CAG–9.
Docket# SA98–63, 001, Mull Drilling Company, Inc.
CAG–10.
Docket# RP96–320, 021, Koch Gateway Pipeline Company
CAG–11.
Docket# GP98–32, 001, Anadarko Petroleum Corporation v. Panenergy Pipe Line Company, et al.
CAG–12.
Docket# RP97–20, 018, El Paso Natural Gas Company
CAG–13.
Docket# OR92–8, 000, SFPP, L.P.
Other#s OR93–5, 000, SFPP, L.P.; OR94–3, 000, SFPP, L.P.; OR94–4, 000, SFPP, L.P.; OR95–5, 000, Mobil Oil Corporation v. SFPP, L.P.; OR95–34, 000, Tosco Corporation v. SFPP, L.P.
CAG–14.
Docket# OR96–15, 000, Ultramar, Inc. v. SFPP, L.P.
Other#s OR96–2, 000, Texaco Refining and Marketing, Inc., Arco Products Company and Ultramar,

Inc., v. SFPP, L.P., OR96–10, 000, Texaco Refining and Marketing, Inc., Arco Products Company and Ultramar, Inc. v. SFPP. L.P.; OR96–17, 000, Texaco Refining and Marketing, Inc., Arco Products Company and Ultramar, Inc., v. SFPP, L.P.; OR97–2, 000, Ultramar, Inc. v. SFPP, L.P.; OR98–1, 000, Arco Products Company, Texaco Refining and Marketing Inc. Mobil Oil Corporation and Ultramar Diamond Shamrock, et al. v. SFPP, L.P.; OR98–1, 001, Arco Products Company, Texaco Refining and Marketing Inc., Mobil Oil Corporation and Ultramar Diamond Shamrock, et al. v. SFPP, L.P.; OR98–2, 000, Arco Products Company, Texaco Refining and Marketing Inc., Mobil Oil Corporation and Ultramar Diamond Shamrock, et al. v. SFPP, L.P.; OR98–13, 000, Arco Products Company, Texaco Refining and Marketing Inc., Mobil Oil Corporation and Ultramar Diamond Shamrock, et al. v. SFPP, L.P.

CAG–15.
Docket# CP97–765, 001, ANR Pipeline Company

CAG–16.
Docket# CP98–149, 001, El Paso Natural Gas Company

CAG–17.
Docket# CP98–717, 000, El Paso Natural Gas Company

CAG–18.
Docket# CP98–752, 000, Florida Gas Transmission Company and Southern Natural Gas Company

CAG–19.
Docket# CP99–36, 000, Equitrans, L.P.

CAG–20.
Docket# CP99–37, 000, Town of Colorado City, Arizona

CAG–21.
Docket# CP99–46, 001, PG&E Gas Transmission, Northwest Corporation

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I.
Pipeline Rate Matters

PR–1.
Reserved

II.
Pipeline Certificate Matters

PC–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 99–628 Filed 1–7–99; 12:15 pm]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 14, 1999, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

—December 10, 1998 (Open and Closed)

B. *New Business Regulation*

—FCB Assistance to Associations [12 CFR Part 615] (Proposed Rule)

*Closed Session**

A. *Report*

—OSMO Report

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: January 7, 1999.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–678 Filed 1–7–99; 3:00 pm]

BILLING CODE 6705–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning Mobile Homes Assistance.

SUPPLEMENTARY INFORMATION: Public Law 93–288, as amended by Public Law 100–707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 408, authorizes the Federal Emergency Management Agency (FEMA) to provide Temporary Housing Assistance. This type of assistance could be in the form of mobile homes, travel trailers, or other readily fabricated dwelling. This assistance is used when required to provide disaster housing for victims of federally declared disasters. Accordingly the FEMA Form 90–1, is designed to ensure sites for temporary housing units will accommodate the home and comply with local, State, and Federal regulations regarding the placement of the temporary housing unit; FEMA Form 90–31, ensures the landowner (if other than the recipient of the home) will allow the temporary housing unit to be placed on the property; and ensure that routes on ingress and egress to and from the property are maintained.

Collection of Information

Title: Request for Site Inspection; Landowner's Authorization/Ingress/Egress Agreement.

Type of Information Collection: Reinstatement.

OMB Number: 3067–0222.

Form Numbers: 90–1 and 90–31.

Abstract: Temporary Housing Assistance (Disaster Housing Assistance) uses mobile homes, travel trailers, or other forms of readily fabricated housing to provide temporary housing to eligible victims of federally declared disasters. The collection of this information is required to determine the site feasibility for the placement of a temporary housing unit and ensures written permission of the property owner to allow the unit on the land, and rights of ingress and egress for the unit.

Affected Public: Individuals or households.

Number of Respondents: 1000.

Frequency of Response: On occasion.

Hours per Response: 10 minutes for each form.

Estimated Total Annual Burden Hours: 334.

Estimated Cost: $6,400.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact David L. Porter, Program Specialist, Response and Recovery Directorate, RR–HS–PG, 202–646–3883 or Carl Hallstead, 202–646–3654 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information or email muriel.anderson@fema.gov.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–523 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other agencies to take this opportunity to comment on proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning Reimbursement for Cost of Firefighting on Federal Property.

SUPPLEMENTARY INFORMATION: This collection of information is necessary in order to reimburse fire services for claims submitted for fighting fires on property which is under the jurisdiction of the United States. Such claims are authorized by section 11 of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93–498, 88 Stat. 1535, 15 U.S.C. 2201 et seq.). Section 11 of the Act is implemented by FEMA regulations 44 CFR part 151.

Collection of Information

Title. Reimbursement for Cost of Fighting Fire on Federal Property.

Type of Information Collection. Extension of a currently approved collection.

OMB Number: 3067–0141.

Form Numbers. No forms required.

Abstract. Collection of Information is required in order to reimburse fire services for claims submitted for fighting fires on property which is under the jurisdiction of the United States and to determine the amount authorized for payment. The FEMA Director, the United States Fire Administration Administrator, and the U.S. Treasury will use the information to ensure proper expenditure of Federal funds.

Affected Public: State, local, or tribal government.

Number of Respondents: 4.

Frequency of Response: Annually.

Hours per Response: 1.5.

Estimated Total Annual Burden Hours. 24.

Estimated Cost. Negligible.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received on or before March 12, 1999.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524. Email address Muriel.anderson@FEMA.gov.

FOR FURTHER INFORMATION CONTACT: Contact Donald G. Bathurst, Deputy Administrator, U.S. Fire Administration, at (301) 447–1080 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: December 22, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–524 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of information that will encompass the financial and administrative reporting and recordkeeping requirements associated

with FEMA functional and program activities funded under Performance Partnership Agreements with State and local governments.

SUPPLEMENTARY INFORMATION: Cooperative Agreements under Performance Partnership Agreements (PPA), will be the vehicle for achieving the Federal Emergency Management Agency's (FEMA's) Strategic goal of establishing in concert with its partners, a national emergency management system that is comprehensive, risk-based and all hazards in approach. It focuses on integrating and achieving Federal and State goals and objectives for the four broad emergency management functions: Mitigation (risk reduction), preparedness (operational readiness), response (emergency) operations, and recovery operations. The PPA also carries out FEMA initiatives relative to national emergency management goals (e. g., the National Mitigation Strategy) and pulls into a single document all FEMA and State memoranda of understanding and agreements.

Collection of Information

Title: Financial and Technical Assistance Under Performance Partnership Agreements.

Type of Information Collection. Revision of currently approved collection.

OMB Number: 3067–0206.

Form Numbers: SF 424, Application for Federal Assistance; Indirect Cost Agreement; FF 20–20, Budget Information—Nonconstruction; FF 20–22, Narrative Statement; FF 20–15, Budget Information-Construction Projects; FF 20–16, Assurances; FF 76–10a, Obligating Document for Awards/Amendments; FF 20–19, Report of Unobligated Balance of Federal Funds, Drawdowns, and Undrawn funds; FF 20–10, Financial Status Report; FF 20–17, Outlay Report and Request for Reimbursement for Construction Programs; FF 20–18, Report of Government Property; SF–SAC, Data Collection form for Reporting on Audits.

Abstract. The collection of information focuses on Standard and FEMA forms associated with financial and administrative reporting and recordkeeping requirements that enables State and Local governments to request from FEMA federal financial and technical assistance through Performance Partnership Agreements.

Affected Public: State, Local or Tribal Governments.

FEMA/forms and other reporting	No. of respondents (A)	Frequency of response (B)	Hours Per response (C)	Annual Reporting Hours (A×B×C)	Record-keeping burden hours
FF20–10 Financial Status Report	56	20	9.8	10976	11200
FF 20–15 Budget Information Construction Program	56	5	17	4760	4816
FF20–16 Summary Sheet for Assurance and Certification	56	1	1.5	84	95.2
FF 20–17 Outlay Report and Request for Reimburse-ment for Construction	56	15	17	14280	144488
FF 20–18 Report of Government Property	56	2	6	672	694.4
FF20–19 Report of Unobligated Balance of Federal Funds	56	20	2	2240	2464
					2464
FF20–20NC Budget Information Non Construction	56	10	9.8	5488	5600
FF20–22 Narrative Form	56	5	8	2240	2296
FF–20–22NC Performance Report	56	2	8	896	918.4
FF–20–22C Performance Report	56	5	8	2240	2296
FF–20–22NC Narrative Non-Construction	56	2	8	896	918.4
FF–76–10A Obligating the Document for Award	56	2	1.5	168	190.4
SF–424 Application for Federal Assistance	56	1	2	112	123.2
Reading and Understanding	56	1	12	672	683.2
Indirect Cost Agreement	56	2	50	5600	5622.4
Budget Deviations	56	2	5.8	649.4	672
SF-Data Collection	56	2	30	3360	3382.4

Estimated Total Annual Burden and Recordkeeping Hours. 69,277.6.

Estimated Cost. $400,000.00.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Charles F. McNulty, Office of Financial Management, Room 350, Washington D.C., Phone No. (202) 646–2976 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: December 23, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–525 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes and for Flood Insurance Study Backup Data

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain requests that you (the requester) make for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The changes in the fee schedules will allow us (FEMA) to reduce further the expenses to the NFIP by recovering more fully the costs associated with (1) processing conditional and final map change requests and (2) retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping.

EFFECTIVE DATE: The revised fee schedules are effective for all requests dated March 1, 1999, or later.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472; (202) 646–3461 or by facsimile at (202) 646–4596 (not toll-free calls), or (email) *matthew.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain requests for changes to NFIP maps and for processing requests for FIS backup data. The revised fee schedule for map changes is effective for all requests dated March 1, 1999, or later. It supersedes the current fee schedule, which was established on March 10, 1997.

The revised fee schedule for requests for FIS backup data also is effective for all requests dated March 1, 1999, or later. It supersedes the current fee schedule, which was established on March 10, 1997.

To develop the revised fee schedules, we evaluated the actual costs of reviewing and processing requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs) and requests for FIS backup data.

As we indicated in the **Federal Register** notice published on February 6, 1997, a primary component of the fees is the prevailing private-sector rates charged to us for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, we will evaluate the fees periodically and publish revised fee schedules, when needed, as notices in the **Federal Register**.

Fee Schedule for Requests for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 1997, we maintained the following flat user fees, which are to be submitted with all requests:

- Request for single-lot/single-structure CLOMA, CLOMR–F, and LOMR–F—$400.
- Request for single-lot/single-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA)—$300.
- Request for multiple-lot/multiple-structure CLOMA—$700.
- Request for multiple-lot/multiple-structure CLOMR–F and LOMR–F—$800.
- Request for multiple-lot/multiple-structure LOMR–F based on as-built information (CLOMR–F previously issued by FEMA)—$700.

Fee Schedule for Requests for Conditional Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, you (the requester) must submit the flat user fees shown below with requests for CLOMRs dated March 1, 1999, or later that are not based on structural measures on alluvial fans. These fees are based on a review of actual cost data for Fiscal Year 1997.

- Request based on new hydrology, bridge, culvert, channel, or combination thereof—$3,100.
- Request based on levee, berm, or other structural measure—$4,000.

Fee Schedule for Requests for Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, you must submit the flat user fees shown below with requests for LOMRs and PMRs dated March 1, 1999, or later that are not based on structural measures on alluvial fans. These fees are based on a review of actual cost data for Fiscal Year 1997.

- Request based on bridge, culvert, channel, or combination thereof—$4,000.
- Request based on levee, berm, or other structural measure—$4,700.
- Request based on as-built information submitted as followup to CLOMR—$3,400.
- Request based solely on submission of more detailed data—$3,100.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 1997, we maintained $5,000 as the initial fee for your requests for LOMRs and CLOMRs based on structural measures on alluvial fans. We also will continue to recover the remainder of the review and processing costs by invoicing the requester before issuing a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to we ($50 per hour) will continue to use to calculate the total reimbursable fees.

Fee Schedule for Requests for Flood Insurance Study Backup Data

You must submit the user fees shown below with your requests for FIS backup data dated March 1, 1999, or later. These fees are based on a review of actual cost data for Fiscal Year 1997. They are based on the complete recovery of our costs for retrieving, reproducing, and distributing the data, as well as a pro rata share of the costs for maintaining the data and operating the fee reimbursement system.

As under the previous fee schedule, all entities except the following will be charged for requests for FIS backup data: our Study Contractors; our Technical Evaluation Contractors; the Federal agencies involved in performing studies and restudies for us (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, and Tennessee Valley Authority); communities that have supplied the Digital Line Graph base to us and request the Digital Line Graph data (Category 6 below); State NFIP Coordinators if the data have not already been provided on microfiche or CD–ROM or if the State is actively involved in performing a study or restudy that will be used by us to update NFIP maps. The only other exception is that one copy of the FIS backup data will be provided to a community free of charge if the data are requested during the statutory 90-day appeal period for an initial or revised FIS for that community.

We have established seven categories into which we separate requests for FIS backup data. These categories are:

(1) *Category 1*—Paper copies, microfiche, or diskettes of hydrologic and hydraulic backup data for current or historical FISs

(2) *Category 2*—Paper or mylar copies of topographic mapping developed during FIS process

(3) *Category 3*—Paper copies or microfiche of survey notes developed during FIS process

(4) *Category 4*—Paper copies of individual Letters of Map Change

(5) *Category 5*—Paper copies of preliminary Flood Insurance Rate Map

or Flood Boundary and Floodway Map panels

(6) *Category 6*—Computer tapes or CD-ROMs of Digital Line Graph files

(7) *Category 7*—Computer diskettes and user's manuals for our computer programs

You must submit a *non-refundable* fee of $140, to cover the preliminary costs of research and retrieval, to begin requests for data under Categories 1, 2, and 3. The total costs of processing requests in Categories 1, 2, and 3 above will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. The initial fee will be applied against the total costs to process the request, and we will invoice you for the balance before the data are provided. No data will be provided to you until all required fees have been paid.

We do not require an initial fee to begin a request for data under Categories 4 through 7. We will notify you by telephone about the availability of materials and the fees associated with requested data. As with requests for data under Categories 1, 2, and 3, we will not provide any data to you until you pay all required fees.

The costs for processing requests under Categories 4 through 7 have not varied. Therefore, the flat user fees for these categories of requests, shown below, will continue to be required.

	Dollars
Request Under Category 4:	
First letter	40
Each additional letter	10
Request Under Category 5:	
First panel	35
Each additional panel	2
Request Under Category 6 (per county)	150
Request Under Category 7 (per copy)	25

Payment Submission Requirements

You must make fee payments before we render services. You must make these payments by check, by money order, or by credit card payment. Make checks and money orders payable, in U.S. funds, to the *National Flood Insurance Program*.

We will deposit the fees we collect in the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: January 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–526 Filed 1–8–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Empire Shipping Company, Inc., Cargo Building 80, JFK International, Airport, Jamaica, NY 11430, Officer: Helen Duffy, President, Richard Locari, Secretary

Dated: January 5, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–486 Filed 1–8–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Fred C. Krahmer Irrevocable Trust, and Fred W. Krahmer, as trustee, both of Fairmont, Minnesota; to acquire voting shares of Truman Bancshares, Inc., Truman, Minnesota, and thereby indirectly acquire voting shares of Peoples State Bank of Truman, Truman, Minnesota.

Board of Governors of the Federal Reserve System, January 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–471 Filed 1–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Chelsea Bancshares, Inc., Chelsea, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Chelsea, Chelsea, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. State National Bancshares, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of Valley Bancorp, Inc., El Paso, Texas, and thereby

indirectly acquire Montwood National Bank, El Paso, Texas.

In connection with this application, Eggemeyer Advisory Corporation, Castle Creek Capital, LLC, Castle Creek Capital Partners Fund I, LP, all of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of Valley Bancorp, Inc., El Paso, Texas, and thereby indirectly acquire Montwood National Bank, El Paso, Texas.

2. Central Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Caldwell Bancshares, Incorporated, Caldwell, Texas, and thereby indirectly acquire Caldwell Bancshares of Delaware, Inc., Wilmington, Delaware, and Caldwell National Bank, Caldwell, Texas.

3. La Plata Bancshares, Inc., Hereford, Texas, and La Plata Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Hereford, Hereford, Texas.

Board of Governors of the Federal Reserve System, January 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–469 Filed 1–8–99; 8:45 am]

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 25, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Johnson Holdings, Inc., and East Central Holding Company, both of Isanti, Minnesota; to engage *de novo* through their subsidiary, Isanti Agency, Inc., Isanti, Minnesota, in securities brokerage activities, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, January 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–470 Filed 1–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $15,308,000 for section 8(a)(1), and $1,530,800 for section 8(a)(2)(A).

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879 or Gabriel Dagen, Bureau of Competition, Accounting office, (202) 326–2573.

(Authority: 15 U.S.C. § 19(a)(5)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–516 Filed 1–8–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 10:00 a.m.–4:00 p.m., January 22, 1999.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations on post-acute care focused on data collection and quality of care, discuss work plans, and attend to other business as required.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Carolyn Rimes, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410)–786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: January 4, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–533 Filed 1–8–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0148]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization Scheduling Recommendations for Ephedrine, Dihydroetorphine, Remifentanil, and Certain Isomers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 1999. This notice is issued under the Controlled Substances Act.

DATES: Written comments by February 10, 1999; written requests for a public meeting and the reasons for such a request by January 26, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for a public meeting and the reasons for such a request to Nicholas P. Reuter (address below).

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382, or e-mail: ''nreuter@oc.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). Section 201(d)(2)(B) of the Controlled Substances Act (the CSA) (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS shall then evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed below, the Secretary of State has received two notifications from the Secretary-General of the United Nations (the Secretary-General) regarding substances to be considered for control under the Psychotropic Convention. These notifications reflect the recommendations from the 31st WHO Expert Committee for Drug Dependence (ECDD), which met in June 1998. In the **Federal Register** of March 18, 1998 (63 FR 13258), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notifications from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs. The Secretary of State has received a notification form the Secretary-General regarding substances to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, in an effort to provide interested and affected persons an opportunity to submit comments regarding the WHO recommendations for narcotic drugs, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant agencies to assist the Secretary of State in formulating the U.S. position on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the Single Convention.

II. United Nations Notifications

The formal United Nations notifications which identify the drug substances and explain the basis for the recommendations are reproduced below.

A. Notification on l-ephedrine, and d,l ephedrine

Reference: NAR/CL.18/1998 CU 98/215
TLAB/CSSS/303/98
UNDCP 42nd CND
WHO/ECDD 31 (1971C)

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the World Health Organization (WHO), pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances of 1971, has notified the Secretary-General by note dated 30 September 1998 that it is of the opinion that (1*RS*2*S*)-2-methylamino-1-phenylpropan-1-ol (also known as *l*-ephedrine) and the racemate (1*RS*2*SR*)-2-methylamino-1-phenylpropan-1-ol (also known as *d*,*l*-ephedrine) should be included in Schedule IV of that Convention.

In accordance with the provisions of article 2, paragraphs 1 and 4, of the Convention, the Secretary-General hereby transmits the text of the notification as annex I to the present note.

The World Health Organization, in connection with the notification has also submitted advance excerpts from the report of the thirty-first meeting of the WHO Expert Committee on Drug Dependence (23–26 June 1998), which reviewed the substance with a view, *inter alia*, to possible international control. The excerpts from that report concerning the substance recommended for scheduling are hereby transmitted as annex II.

In accordance with the provisions of article 2, paragraph 2 of the Convention, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in March 1999. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

''The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information form the World Health Organization or from other appropriate sources.''

In order to assist the Commission in reaching a decision, it would be appreciated if an economic, social, legal, administrative or other factors the Government may consider relevant to the possible scheduling of *l*-ephedrine and the racemate could be

communicated at the latest by 4 January 1999 to the Executive Director of the Office for Drug Control and Crime Prevention, c/o Commission and Secretariat Services Section, P.O. Box 500, A–1400 Vienna, Austria, fax: +43–1–26060–5885.
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Note dated 30 September 1998 addressed to the United Nations By the World Health Organization

The World Health Organization presents its compliments to the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, assessments and recommendation of the World Health Organization concerning the proposed inclusion of ephedrine (*l*-ephedrine and its racemate) in Schedule IV of the said Convention, as set forth in Annex hereto.

The World Health Organization avails itself of this opportunity to present to the United Nations the assurance of its highest consideration.
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Ephedrine

1. *Substance identification*

Ephedrine (2-methylamino-1-phenylpropan-1-ol) exists in fours stereoisomeric forms and two corresponding racemic mixtures. They are designated traditionally *l*-ephedrine, *d*-ephedrine and *l*-pseudoephedrine and *d*-pseudoephedrine. *l*-Ephedrine, also designated as (–)-ephedrine, is chemically (1*R*,2*S*)-2-methylamino-1-phenylpropan-1-ol. Racemic ephedrine also designated as *d*,*l*-ephedrine or (±)-ephedrine, is chemically (1*RS*,2*SR*)-2-methylamino-1-phenylpropan-1-ol.

2. *Similarity to known substances and effects on the central nervous system*

Ephedrine is chemically and pharmacologically similar to amphetamines. It is also similar to cathine which is (+)-norpseudoephedrine. Ephedrine is both an α- and β-adrenergic agonist and enhances the release of norepinephrine from sympathetic neurons. In general, ephedrine is viewed as being a less potent central nervous system stimulating agent but a more effective bronchodilator. Ephedrine increases motor activity and mental alertness, and diminishes the sense of fatigue. Ephedrine decreases appetite and promotes weight loss.

3. *Dependence Potential*

In humans with histories of substance abuse, *l*-ephedrine, *d*-amphetamine (INN: dexamfetamine), *d*-methamphetamine (INN: metamfetamine), phenmetrazine, and methylphenidate injected subcutaneously produced similar increases in respiratory rate and blood pressure and similar types of subjective changes, including euphoria. The agents differed in relative potency. In general, amphetamine-like stimulants differed only in relative potencies when given orally. *l*-Ephedrine was five times less potent than amphetamine in producing amphetamine-like subjective and physiological effects in substance abusers, but was more potent than amfepramone (diethylpropion).

In monkeys trained to self-administer cocaine, *l*-ephedrine maintained responding rates greater than saline in substitution tests. In rats trained to discriminate cocaine from placebo, *l*-ephedrine generalized to cocaine – though at a slightly lower rate than *d*-amphetamine. Ephedrine generalized to cocaine and *d*-amphetamine in other drug discrimination studies in rats. In amphetamine-trained monkeys, an oral dose of 10 mg racemic ephedrine was discriminated as amphetamine. In monkeys trained to self-administer cocaine, *l*- and racemic ephedrine had definite reinforcing effects. *d*-Ephedrine was both less efficacious and potent than the *l*-isomer in its ability to generalize to amphetamine.

4. *Actual abuse and/or evidence of likelihood of abuse*

Of the 50 countries which have returned the questionnaire to WHO, ephedrine was available for medical use in 46 countries. Of the 46 countries, the following 12 countries have indicated present or past ephedrine abuse or illicit traffic in ephedrine presumably associated with its abuse: Belgium, Burkina Faso, China, Costa Rica, Germany, Finland, France, Ireland, Sudan, Slovakia, Thailand and USA. Although quantitative information is difficult to obtain, the extent of ephedrine abuse was significant enough for some governments to implement various regulatory controls. The current problem of abuse seems to be particularly serious in certain African countries. When abuse exists, it seems to involve ephedrine single entity products. In addition, in the USA, combination products containing ephedrine in herbal preparations have been abused.

The problem of ephedrine diversion was reported in the material provided by the International Narcotics Control Board, which indicated that few countries served as major supplier of ephedrine to other countries. Often, there is a large gap between the amount required for legitimate use and the amount imported into these countries reflecting diversion for abuse. Some ephedrine, traded in dosage forms, is used as a precursor to synthesize methamphetamine.

5. *Therapeutic usefulness*

Ephedrine is used widely as a bronchodilator in the symptomatic treatment of reversible bronchospasm which may occur in association with asthma, bronchitis, emphysema, and other obstructive pulmonary diseases. Hypotension and shock have been treated with parenteral ephedrine through its actions producing cardiac stimulation and vasoconstriction. Less common indications include obesity, motion sickness and enuresis.

The commonality of ephedrine use as a medicine is indicated by the fact that 92% of the countries which responded to the WHO questionnaire (46/50) indicated therapeutic use of ephedrine. This figure suggests that ephedrine is used therapeutically in many countries in the world. Some of these countries have indicated a large number of pharmaceutical products containing ephedrine on the market, often as combination products.

6. *Recommendation*

On the basis of the available information concerning its pharmacological profile, dependence potential and actual abuse, the public health and social problems associated with the abuse of ephedrine are assessed to be significant. The current problem appears to be particularly serious in certain African countries. On this basis, it is recommended that *l*-ephedrine and the racemate be placed in Schedule IV of the Convention on Psychotropic Substances, 1971. The *d*-isomer, which is significantly less potent than the *l*-isomer, need not be controlled. In making this recommendation, it is noted that ephedrine combination products would be eligible for exemption according to the 1971 Convention.

It is further noted that there are overlapping jurisdictions concerning the 1971 Convention and the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which may make full effective international regulations of ephedrine difficult. The interrelationship and interpretation of these conventions needs clarification by appropriate international bodies, including the International Narcotics Control Board and the World Health Organization. In addition, it is recommended that these bodies develop ways to alert Member States which export pharmaceutical formulations of ephedrine, that these preparations have the potential for abuse and use as a precursor.

B. Notification Regarding the Proposal of the Government of Spain

Reference: NAR/CL.17/1998 CU 98/214
TLAB/CSSS/302/98
UNDCP 42nd CND
WHO/ECDD 31 (1971C)

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.4/1997 of 28 May 1997, by which he transmitted a notification received from the Government of Spain pursuant to article 2, paragraph 1 of the Convention on Psychotropic Substances, 1971. In its notification the Government of Spain informed the Secretary-General that it was of the opinion that Schedules I and II of the 1971 Convention should be amended to include: (a) isomers, except were expressly excluded, of substances listed in those Schedules, whenever the existence of such isomers is possible; (b) esters and ethers of substance in those Schedules, except where included in another Schedule, whenever the existence of such esters or ethers is possible; (c) salts of those esters, ethers and isomers, under the conditions stated above, whenever the formation of such salts is possible; and (d) a substance resulting from modification of the chemical structure of a substance already in Schedule I or II and which produces pharmacological effects similar to those produces by the original substances.

The Secretary-General also transmitted a copy of that notification to the World Health Organization (WHO), in accordance with the provision of article 2, paragraph 2 of the Convention, for consideration by the thirty-first meeting of the WHO Expert Committee on Drug Dependence in 1988.

In accordance with the provision of article 2, paragraph 4, of the Convention, the World Health Organization has transmitted to the Secretary-General, by a noted dated 30 September 1988, its assessment and recommendation in response to the proposal made by the Government of Spain. Those recommendations read as follows:

(i) WHO does not recommend to amend Schedule I and Schedule II of the 1971 Convention, to extend international controls collectively to esters, ethers, and analogues of controlled substances;

(ii) with regard to isomers, WHO recommends that a phrase could be added for substances in Schedule I of the 1971 Convention. That phrase would read as follows: ''The stereoisomers, unless specifically excepted, of substance in this Schedule, whenever the existence of such stereoisomers is possible within the specific chemical designation'', and

(iii) with regard to stereoisomers of the substances in Schedule II, III and IV of the 1971 Convention, WHO recommends that interpretation guidelines should be developed by the International Narcotic Control Board in collaboration with the World Health Organization, in order to eliminate the confusion arising from inconsistencies in the present nomenclature of the Schedules in the 1971 Convention.

In accordance with the provisions of article 2, paragraphs 1 and 4, of the Convention, the Secretary-General hereby transmits the text of the notification as annex I to the present note.

The World Health Organization, in connection with the notification has also submitted advance excerpts from the report of the thirty-first meeting of the WHO Expert Committee on Drug Dependence (23–26 June 1998), which examined the proposal of the Government of Spain. The excerpts from that report are hereby transmitted as annex II.

In accordance with the provision of article 2, paragraph 2 of the Convention, the notifications from the Government of Spain and from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in March 1999. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

''The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information form the World Health Organization or from other appropriate sources.''

In order to assist the Commission in reaching a decision, it would be appreciated if an economic, social, legal, administrative or other factors the Government may consider relevant to the recommendations made by the World Health Organization in response to the proposal made by the Government of Spain could be communicated a the latest by 4 January 1999 to the Executive Director of the Office for Drug Control and Crime Prevention, c/o Commission and Secretariat Services Section, P.O. Box 500, A–1400 Vienna, Austria, fax: +43–1–26060–5885.

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Note dated 30 September 1998 addressed to the United Nations By the World Health Organization

The World Health Organization presents its compliments to the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, assessments and recommendation of the World Health Organization, as set forth in Annex hereto, in response to the Note Verbale of 15 May 1997 concerning the proposal by the Government of Spain.

The World Health Organization avails itself of this opportunity to present to the United Nations the assurance of its highest consideration.

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Proposal of the Government of Spain

1. *Outline of the Proposal*

In 1997, the Spanish Government submitted a proposal to the Secretary General of the United Nations to amend the 1971 Convention on Psychotropic Substances by adding to Schedules I and II, the chemical compositions of the isomers, esters and ethers of the psychotropic substances already in these schedules, as well as any modified chemical compounds producing effects similar to those produced by the original substances (hereinafter referred to as ''analogues''). The Spanish proposal also recommends the inclusion of the salts of the substances. However, the question of salts is not addressed in the following section since the salts of the substances listed in these Schedules are already under international control. An in-depth analysis of potential advantages and disadvantages of this proposal has led to the following conclusions.

2. *Assessment and recommendation*

With regard to the scheduling of analogues or ''any modified chemical compounds producing effects similar to those produced by the original substances'', extending controls collectively to these groups of substances which are related to, but potential pharmacologically different from, the substances in the two Schedules may contradict the scheduling procedure stipulated in Article 2 of the 1971 Convention on Psychotropic Substances which requires WHO to evaluate individual problems, such as disagreements among Parties concerning the precise scope of substances under control. The same questions may arise concerning the scheduling of esters and ethers. In addition, the advantages in terms of extended scope of control would be rather limited. Though difficult to evaluation, controlling analogues, esters and ethers is likely to have a negative impact on legitimate industrial and research activities involving these substances.

For these reasons, it is not recommend to amend Schedules I and II of the 1971 Convention to extend international controls collectively to esters, ethers and analogues of controlled substances. It has been noted, however, that criminal activities involving analogues of controlled substances can be controlled at the national level, without extending unnecessary administrative and regulatory controls to these substances used for legitimate industrial and research purposes. In one country, this was achieved by applying only criminal controls to certain specified acts involving analogues. Governments having similar problems with analogues should consider the desirability of adopting similar selective control measures, an option which is not available under the 1971 Convention once analogues have been scheduled.

In some countries, introducing national controls for new analogues synthesized by clandestine laboratories is very difficult. Ideally, a combination of national and international controls should be developed concurrently. There is a need to expedite the critical review of substance brought to the attention of WHO by governments.

With regard to isomers, a useful clarification could be provided by introducing a modified qualifying phrase in the proposal of the Spanish Government into Schedule I. The revised phrase to be added to Schedule I would read as follows (addition underlined):

The *stereo*isomers, unless specifically excepted, of psychotropic substance in this Schedule, whenever the existence of such *stereo*isomers is possible within the specific chemical designation in this Schedule.

This renders the proposal chemically precise and consistent with the current interpretation of the Schedule. Hence the proposal could provide an explicit clarification of the scope of controlled isomers including racemates.

With regard to stereoisomers of the substances in Schedules II, III and IV, the confusion arising from the inconsistencies in the present nomenclature of the Schedules should be clarified by means of interpretation guidelines to be developed by an appropriate international body, such as the International Narcotics Control Board, in collaboration with WHO.

C. Notification on Dihydroetorphine and Remifentanil

Reference: NAR/CL.16/1998 CU 98/213
TLAB/CSSS/301/98
UNDCP 42nd CND
WHO/ECDD 31 (1961C)

The Secretary-General of the United Nations presents his compliments to the

Secretary of State of the United States of America and has the honour to inform the Government that the World Health Organization (WHO), pursuant to article 3, paragraphs 1 and paragraph 3 (iii), of the Single Convention on Narcotic Drugs, 1961, and of that Convention as amended by the 1971 Protocol, has notified the Secretary-General by note dated 30 September 1998 that it is of the opinion that 7,8-dihydro-7-α-[1-(*R*)-hydroxy-1-methylbutyl]-6,14-*endo*-ethanotetrahydrooripavine (also known as dihydroetorphine) and that 1-(2-methoxycarbonylethyl)-4-(phenylpropionylamino)-piperidine-4-carboxylic acid methyl ester (also known as remifentanil) should be included in Schedule I of the Convention.

In accordance with the provisions of article 3, paragraph 2, of the Convention, the Secretary-General hereby transmits the text of the notification as annex I to the present note.

The World Health Organization, in connection with the notification has also submitted advance excerpts from the report of the thirty-first meeting of the WHO Expert Committee on Drug Dependence (23–26 June 1998), which reviewed these substances with a view, *inter alia*, to possible international control. The excerpts from that report concerning the two substances recommend for scheduling, are hereby transmitted as annex II.

In accordance with the provisions of article 3, paragraph 2 of the Convention, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in March 1999 in accordance with article 3, paragraph (iii), of the Convention.

Article 3, paragraph 3 (iii), reads as follows:

''If the World Health Organization finds that the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into a drug, it shall communicate that finding to the Commission which may, in accordance with the recommendation of the World Health Organization, decide that the substance shall be added to Schedule I or Schedule II.''

Any action or decision taken by the Commission with respect to this notification, pursuant to article 3, paragraph 3 (iii), of the Convention, will be notified to Governments in due course.

11 November 1998
NAR/CL.16/1998
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Note dated 30 September 1998 addressed to the United Nations By the World Health Organization

The World Health Organization presents its compliments to the United Nations and has the honour to transmit, in accordance with Article 3, paragraphs 1 and 3 (iii) of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, assessments and recommendation of the World Health Organization, as set forth in the annex hereto, concerning the proposed inclusion of dihydroetorphine and remifentanil in Schedule I of the said Convention.

The World Health Organization avails itself of this opportunity to present to the United Nations the assurance of its highest consideration.

11 November 1998
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Dihydroetorphine

1. *Substance identification*

Dihydroetorphine (CAS 14357–76–7) is chemically 7,8-dihydro-7-α-[1-(*R*)-hydroxy-1-methylbutyl]-6,14-*endo*-ethanotetrahydrooripavine.

2. *Similarity to known substances and effects on the central nervous system*

Dihydroetorphine is chemically similar to etorphine, which is in Schedule I of the Single Convention on Narcotic Drugs, 1961. Pharmacologically, animal studies indicate that dihydroetorphine is a highly potent analgesic, with an analgesic efficacy of 6,000 and 11,000 times as potent as morphine in mice and rabbits, respectively. In mice and rabbits, the peak analgesic effect was attained 15 minutes after subcutaneous injection of dihydroetorphine, and the duration of analgesic effect lasted 60–90 minutes, which was shorter than that of morphine (120–150 minutes). Radioligand binding assay indicated that dihydroetorphine is a selective mu-type opioid-receptor agonist.

3. *Dependence Potential*

Animal studies indicated that dihydroetorphine possessed a strong psychological dependence potential, 5,000–10,000 times more potent than morphine in self-administration tests in rats, 500 and 100 times more potent than morphine and heroin in self-administration studies in monkeys, 8,000 and 1,000 times more potent than morphine and heroin in drug discrimination studies in rats, respectively. However, animal studies showed that the physical dependence-producing properties of dihydroetorphine were relatively low. The withdrawal syndromes caused by dihydroetorphine in mice jumping tests were weaker than morphine. In monkey withdrawal precipitation tests and abrupt withdrawal tests, withdrawal syndromes of dihydroetorphine were significantly weaker than those of morphine.

4. *Actual abuse and/or evidence of likelihood of abuse*

Abuse of dihydroetorphine began soon after it was marketed in China in 1992. Although indicated as an analgesic, it was also used as an opiate withdrawal syndrome suppressing agent. Its abuse spread very quickly in the country. Epidemiological studies have shown that there were two reasons for starting to abuse dihydroetorphine – iatrogenic and social. One group of abusers began to use the drug for medical purposes but increased the doses because tolerance developed quickly, and the potent dependence-producing properties of dihydroetorphine played a dominant role in compelling the patient to start abusing the drug. Opiate abusers were another group of people who took the drug as a substitute for heroin because of its stronger psychological dependence-producing properties, cheaper price, and less strict control than heroin.

5. *Therapeutic usefulness*

Dihydroetorphine was registered in China in December 1992 for the relief of acute severe pain. However, it is not useful as a drug for substitution treatment of opioid withdrawal because of short duration of action.

6. *Recommendation*

Dihydroetorphine is a potent mu-type opioid-receptor agonist. Based on its pharmacological properties and dependence potential demonstrated in animal studies, as well as its actual abuse observed in China, it is estimated that dihydroetorphine is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I of the Single Convention on Narcotic Drugs, 1961. It is therefore recommended that dihydroetorphine be placed in Schedule I of this Convention.

Remifentanil (INN)

1. *Substance Identification*

Remifentanil (CAS–132875–61–7), chemically 1-(2-methoxycarbonylethyl)-4-(phenylpropionylamino)-piperidine-4-carboxylic acid methyl ester, is also known as GI 87084X. Remifentanil hydrochloride (CAS–132539–07–2) is also known as GI 87084B. There are no chiral carbon atoms in the molecule; so no stereoisomers or racemates are possible.

2. *Similarity to known substances and effects on the central nervous system*

Remifentanil is classified as a relatively selective mu-type opioid-receptor agonist with a profile similar to fentanyl, alfentanil and sufentanil, but with an ultra-short duration of action. Comparison of potency in *in vitro* binding assays specific for the mu-type opioid receptor has demonstrated similar potencies of remifentanil and fentanyl. Remifentanil's analgesic potency was found as similar to fentanyl, alfentanil and sufentanil in rats, mice and dogs.
In clinical pharmacology studies, remifentanil exhibited properties (including adverse effects) that were similar to other fentanyl analogues. The most serious adverse effects were attributable to its mu-type opioid-receptor agonist properties and included hyptotension, bradycardia, muscle rigidity and respiratory depression.

3. *Dependence potential*

Withdrawal signs developed in rats following cessation of remifentanil administration. Remifentanil substituted for morphine in morphine-dependent withdrawn monkeys. Remifentanil was found reinforcing in self-administration studies in monkeys.
In opiate-experienced nondependent human subjects, the very rapid subjective peak effects of remifentanil were not significantly different from those of fentanyl. In another study involving healthy subjects, euphoria occurred at about the same incidence for remifentanil as for fentanyl and alfentanil.

4. *Actual abuse and/or evidence of likelihood of abuse*

One case of remifentanil abuse and overdose by intra-nasal administration occurred during the clinical study of the drug. Remifentanil had been administered over a period of several weeks, leading to an overdose resulting in loss of consciousness, tachycardia, depressed respiration and seizures. Following emergency room treatment, the patient recovered.

5. *Therapeutic usefulness*

Remifentanil is used as an analgesic during induction and maintenance of general anesthesia, in postoperative anesthesia, and in monitored anesthesia care. Remifentanil has been approved for marketing in 17 countries.

6. *Recommendation*

Remifentanil is a short-acting mu-type opioid-receptor agonist. Based on its pharmacological properties and dependence potential, it is estimated that remifentanil is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I of the Single Convention on Narcotic Drugs, 1961. It is therefore recommended that remifentanil be placed in Schedule I of this Convention.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the Psychotropic Convention include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

A. Ephedrine

Ephedrine has been recommended for control in Schedule IV of the Psychotropic Convention. If ephedrine is controlled in Schedule IV, the United States, as a signatory to the Convention would have to determine what additional domestic controls, if any, may be needed to fulfill its obligations.

The Convention requires licenses for manufacturers, distributors, and those entities in the retail trade. In addition, Article 9 of the Convention states that ''[t]he Parties shall require that substances in Schedules II, III and IV be supplied or dispensed for use by individuals pursuant to medical prescription only, except when individuals may lawfully obtain, use, dispense or administer such substances in the duly authorized exercise of therapeutic or scientific functions.'' On the other hand, the WHO notification on ephedrine states that ''in making this recommendation, it is noted that ephedrine combination products would be eligible for exemption according to the 1971 Convention.'' The Psychotropic Convention does not mention ''combinations'' but the term ''preparations'' is defined under Article 1 as ''(i) any solution or mixture, in whatever physical state containing one or more psychotropic substances, or (ii) one or more psychotropic substances in dosage form.'' Under Article 3, paragraphs 2 and 3, a party may exempt a preparation from certain controls under the Convention, including the prescription requirement, if the preparation is compounded in such a way that it presents no, or a negligible, risk of abuse.

Ephedrine is available in the United States as an ingredient in over-the-counter (OTC) bronchodilator products and in certain OTC hemorrhoid treatment products. Importantly, ephedrine has been designated as a listed chemical under the CSA (21 U.S.C. 802(34)) and is subject to regulations under 21 CFR 1309, 1310, and 1313 , which are enforced by the Drug Enforcement Administration. Accordingly, distribution of ephedrine single-entity products and certain transactions involving ephedrine combination products are subject to the recordkeeping, reporting, registration, and import/export notification provisions of the CSA. These controls must be examined to determine whether they enable the United States to fulfil its obligations for ephedrine, should it be controlled under Schedule IV of the Psychotropic Convention. Finally, it should be noted that under Article 2, paragraph 7(d), of the Psychotropic Convention, a party may notify the United Nations that, due to exceptional circumstances, it will elect not to apply all of the provisions required by the Convention.

B. Spanish Proposal on Isomers of Schedule I Substances

WHO has also recommended adding a phrase to Schedule I that would ''clarify'' that stereoisomers of psychotropic substances in Schedule I of the Convention would be considered as Schedule I substances. According to WHO, this is ''chemically precise and consistent with the current interpretations of the Convention * * * [and] could provide an explicit clarification of the scope of controlled isomers including racemates.''

It should be noted that WHO is recommending a change in the wording of the list of substances controlled in Schedule I. A similar change was approved by the Commission on Narcotic Drugs in 1977 which modified the Schedules to state, ''[a]lso under international control are the salts of the substances listed in these Schedules, whenever the existence of such salts is possible.'' Adding such a statement about stereoisomers, as WHO has recommended, should not have a significant impact on the scope of control of psychotropic substances. Domestically, under the CSA, stereoisomers are automatically subject to control when a substance is added to Schedule I.

C. Dihydroetorphine and Remifentanil

Dihydroetorphine is a hydrogenated derivative of etorphine and a potent μ-opioid-receptor agonist used as a short-acting analgesic in China. It is not marketed in the United States, but it is considered a Schedule II narcotic substance under the CSA because it is a thebaine derivative. Remifentanil is a selective μ-opioid-receptor agonist of the fentanyl group. Remifentanil is approved in the Unites States as an anesthetic and is controlled domestically as a narcotic in schedule II of the CSA. As such, no additional controls will be necessary to fulfil U.S. obligations if remifentanil is controlled under Schedule I of the Single Convention.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the United Nations notifications concerning these drug substances and WHO's recommendations on stereoisomers pursuant to the proposal from the Government of Spain. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 811(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations at the CND meeting in March 1999. Comments regarding the WHO recommendations for control of substances under the Single Convention will also be forwarded to the relevant agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

IV. Submission of Comments and Opportunity for Public Meeting

Interested persons may, on or before February 10, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. FDA does not presently plan to hold a public meeting. If any person believes that, in addition to its written comments, a public meeting would

contribute to the development of the U.S. position on the substances to be considered for control under the Psychotropic Convention, a request for a public meeting and the reasons for such a request should be sent to Nicholas P. Reuter (address above) on or before January 26, 1999. The short time period for the submission of comments and requests for a public meeting is needed to assure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (address 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. 99–448 Filed 1–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0001]

McNeil Specialty Products Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that McNeil Specialty Products Company has filed a petition proposing that the food additive regulations be amended to provide for additional uses of sucralose as a general purpose sweetener in food.

DATES: Written comments on the petitioner's environmental assessment by February 10, 1999.

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

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4624) has been filed by McNeil Specialty Products Co., 501 George St., New Brunswick, NJ 08903–2400. The petition proposes to amend the food additive regulations in § 172.831 *Sucralose* (21 CFR 172.831) to expand the permitted uses of sucralose to allow as a general purpose sweetener in food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 10, 1999, submit to the Dockets Management Branch (address above) written comments. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**.

If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 23, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–518 Filed 1–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Peripheral and Central Nervous System Drugs Advisory Committee scheduled for January 29, 1999. This meeting was announced in the **Federal Register** of December 23, 1998 (63 FR 71145).

FOR FURTHER INFORMATION CONTACT: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543.

Dated: January 4, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–517 Filed 1–8–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Projects for Assistance in Transition from Homelessness (PATH) Annual Report—New—The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of

Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 USC 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission will be for approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The estimated annualized burden for these reporting requirements is summarized below.

	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
States	56	1	72	4,032
Local provider agencies and counties	358	1	46	16,468
Total	414			20,500

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 5, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–488 Filed 1–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting and a Workshop

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting and a workshop of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in January 1999.

The Educational Workshop on Clinical Interventions for Individuals with Co-Occurring Addictive and Mental Disorders on January 25 will be open and include discussions on research findings, definition of terms, and other related issues.

The meeting on January 26 will be open and will include discussions related to alcohol; discussion on parity of substance abuse and mental health services; an update on the Council's workgroup activities; and a discussion of other SAMHSA program and policy issues.

Attendance by the public will be limited to space available. Public comments are welcome during the open session. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities. Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Meeting Date and Place:

January 25, 1999: Embassy Suites Chevy Chase Pavilion Hotel, Chevy Chase Rooms I & II, 4300 Military Road, NW, Washington, DC 20015.

January 26, 1999: Embassy Suites Chevy Chase Pavilion Hotel, Tenleytown Rooms I & II, 4300 Military Road, NW, Washington, DC 20015.

Open: January 25, 1999, 8:30 a.m. to 5:00 p.m.

Open: January 26, 1999, 9:00 a.m. to 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Toian Vaughn, Executive Secretary, Parklawn Building, Room 17–89, Telephone: (301) 443–4266; FAX: (301) 443–1587 and E-mail: TVaughn@samhsa.gov.

Dated: January 4, 1999.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–451 Filed 1–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in January 1999.

A summary of the meeting and a roster of the members may be obtained from: Diane McMenamin, Director, Division of Extramural Activities, Policy, and Review, Office of Policy and Program Coordination, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–4266.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: January 12, 1999.

Place: Parklawn Building, Room 17–75—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: January 12, 1999, 1:00 p.m.–3:30 p.m.

Panel: FEMA—The Texas Flood Recovery Project.

Contact: Peggy Thompson, Review Administrator, Room 17–89, Parklawn

Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 5, 1999.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–519 Filed 1–8–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–02]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of the Assistance Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due January 19, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to assessing the year 2000 computer problem.

This survey will solicit information from HUD's business partners to ensure that their information technology systems are addressing the year 2000 problem. If the year 2000 problem is not addressed, safety and litigation issues will arise for HUD. This survey will allow HUD to assess and strengthen the transition of computer systems into the new century.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Year 2000 Survey.

OMB Control Number, if applicable: 2535–0000.

Description of the need for the information and proposed use: This survey will assess the information technology systems for HUD's business partners. This survey will also allow HUD to assess and strengthen the transition of computer systems into the year 2000.

Agency form numbers, if applicable: none.

Members of affected public: State, local and tribal governments, business or other for profit.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This survey will take approximately 10 minutes to complete from 450 respondents. The respondents will be required to submit this survey 6 times a year as specified on the survey.

Status of the proposed information collection: new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 5, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 99–440 Filed 1–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–01]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 12, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jerry Fasick, Financial and Program Analysis Division, telephone number (202) 755–7500, this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HMDA Loan/ Application Register.

OMB Control Number, if applicable: 2502–.

Description of the need for the information and proposed use:

This report collects information for mortgage lenders on application for and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the report as a running log throughout the calendar year and send it to HUD by March 1 of the following calendar year.

Agency Form Numbers if applicable:

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 1,800, frequency of responses is 1, and the hours of response is 148 hours per response.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 4, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 99–441 Filed 1–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–01]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 10, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, the OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 31, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Telephone Surveys.

Office: Policy Development and Research.

OMB Approval Number: 2528–0142.

Description of the Need for the Information and Its Proposed Use: This survey provides HUD a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas not covered by AHS or CPI surveys and in areas where FMRs are believed to be incorrect. It also provides estimates of annual rent changes. This random digit dialing (RDD) survey methodology has been operational for 7 years. The affected public would be those surveyed and Section 8 recipients.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
463,159		1		.02		11,454

Total Estimated Burden Hours: 11,454.

Status: Revision.

Contact: Alan Fox, HUD, (202) 708–0590 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–439 Filed 1–8–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4281–N–08]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Community Planning and Development the Secretary's authority to designate 15 urban Empowerment Zones, pursuant to 26 U.S.C. 1391, as amended by Title IX, Subtitle F, Chapter 1, Section 952 (Designation of New Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Elaine Braverman, Empowerment Zone/Enterprize Community Initiative, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7130, Washington, DC 20410–

0400, Telephone Number (202) 708–2290. Persons with hearing or speech impairments may also utilize HUD's TTY Number at (202) 708–1455 or the Federal Information Relay Service's TTY Number at (800) 877–8339. Aside from the ''800'' number, the telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: Title XIII, Subchapter C, Part I Section 1391 (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, 107 Stat. 543, approved August 10, 1993, codified as 26 U.S.C. 1391, *et seq.*, authorized the designation of an aggregate of nine Empowerment Zones and 95 Enterprise Communities. Under this Act, the Secretary of Housing and Urban Development was authorized to designate up to six urban Enterprise Communities, and the Secretary of Agriculture was authorized to designate up to three rural Empowerment Zones and up to 30 rural Enterprise Communities.

Title IX, Subtitle F, Chapter 1, Section 952 (Designation of New Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997, amended 26 U.S.C. 1391 to add a new paragraph (g), that changed the eligibility criteria for 20 new Empowerment Zones, 15 of which are to be in urban areas and designated by the Secretary of HUD, and five of which are to be in rural areas and designated by the Secretary of Agriculture. The 1997 Act also made some specific changes in the eligibility criteria for new Empowerment Zones.

(On January 7, 1998, the Secretary of HUD delegated his authority to designate two additional urban Empowerment Zones, in accordance with an amendment made by section 951 of the 1997 Act, to the Assistant Secretary for Community Planning and Development. Notice was given to the public of this delegation of authority by publication in the **Federal Register** on January 26, 1998 (63 FR 3761).)

Accordingly, the Secretary delegates authority as follows.

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development the authority to designate 15 additional urban Empowerment Zones, pursuant to 26 U.S.C. 1391(g) as amended by Title IX, Subtitle F, Chapter 1, Section 952 (Designation of New Empowerment Zones) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 885, approved August 5, 1997.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 30, 1998.

Andrew Cuomo,

Secretary.

[FR Doc. 99–442 Filed 1–8–99; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue a Final Comprehensive Conservation Plan (CCP) and Associated Environmental Assessment for Little River National Wildlife Refuge, Broken Bow, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared the Final Comprehensive Conservation Plan and Associated Environmental Assessment for the Little River National Wildlife Refuge, Broken Bow, Oklahoma, pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

ADDRESSES: Copies may be obtained by writing to: April Fletcher, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the final document. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies.

The Service has considered comments and advise generated in response to draft documents prior to the preparation of this final CCP. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of the availability of the final document.

Dated: December 31, 1998.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 99–272 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1320–00 [WYW139975]]

Ark Land Company Coal Lease Application, Carbon County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to 40 CFR 1500–1508, the Bureau of Land Management announces the availability of the FEIS for Ark Land Company Coal Lease Application (WYW139975) in the Green River-Hams Fork Coal Production Region of Wyoming.

DATES: Written comments on the FEIS will be accepted for thirty (30) days following the date the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. We expect EPA will publish that notice on January 8, 1999.

ADDRESSES: Please address questions, comments, or requests for copies of the FEIS to Field Manager, Rawlins Field Office, Bureau of Land Management, P.O. Box 2407, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Brenda Vosika Neuman, Project Team Leader, or John Spehar, Planning and Environmental Coordinator, at the above address or by telephone at 307–328–4200.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 3425.1, Ark Land Company, St. Louis, Missouri (Ark), filed an application with the Bureau of Land Management (BLM) on September 20, 1996, to obtain a coal lease on 4145.15 acres of Federal coal lands located in Carbon County, Wyoming. The lease application area is located within the Carbon Basin Coal Project Area approximately 5 miles northwest of the town of Elk Mountain and 12 miles southeast of the town of Hanna. The Project Area encompasses 18,360 acres of intermingled Federal, State, and private lands.

Based upon BLM's recommendation, Ark amended their application to include an additional 1280 acres of Federal land containing approximately 59 million tons of in-place coal reserves and deleted 190 acres of Federal land which either contained no recoverable coal or were unsuitable for coal mining. These modifications to the lease tract were made to enable preparation of a reasonable underground mine plan with enough reserves for a new mine start. Ark's amended Federal coal lease application contains a total of 5235.15 acres and approximately 149.7 million tons of in-place coal. There are an estimated 235.9 million tons of private and State coal within the Project Area.

Coal mining would be conducted by Arch of Wyoming, Inc. (Arch), an affiliate of Ark, if it is successful in obtaining a Federal coal lease in the proposed Project Area. Arch has operated coal mines in the Hanna Basin Region of Carbon County since 1972.

The FEIS analyzes two alternatives in detail—the Proposed Action and a No Action Alternative. Under the Proposed Action, the preferred alternative, the BLM would hold a competitive lease sale for surface-minable and underground-minable Federal coal. The Proposed Action analyzes leasing Federal coal for both the Elk Mountain surface mining operation and the Saddleback Hills underground mining operation and examines 10 options for transporting coal to processing/loadout facilities. The No Action Alternative analyzes no leasing of any Federal coal in the Project Area. A ''no mining'' alternative (no mining of any Federal, State, or private coal in the Project Area) is not analyzed in detail. Seventy-nine percent of the surface-minable coal within the Project Area is privately owned and BLM believes that the private surface coal could be economically mined even if the Federal coal were not leased. If no Federal coal were leased, the non-Federal underground coal reserves would be uneconomical to mine because of the difficulty of mining small tracts of intermingled private and State coal.

The United States Department of Interior, Office of Surface Mining (OSM) is a cooperating agency in the preparation of the EIS. OSM is the Federal agency that administers surface coal mining under the Surface Mining Control and Reclamation Act of 1977. The Draft Environmental Impact Statement was made available to the public on August 7, 1998. Thirteen written comment letters were received on the draft document. They are included, with the responses, in Chapter 8.0 of the FEIS.

FREEDOM OF INFORMATION: Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular business hours (7:45 a.m.—4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 31, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 99–489 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–22–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–09–1020–00]

New Mexico Resource Advisory Council Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Cancellation of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, the Department of the Interior, Bureau of Land Management (BLM), announced a meeting of the New Mexico Resource Advisory Council (RAC). The meeting was to be held on January 21 and 22, 1999 at the Doubletree Hotel, 3347 Cerrillos Road, Santa Fe, NM.

This is notice that the meeting is cancelled. There are seven vacancies on the New Mexico Resource Advisory Council (NM/RAC) and to date no replacement appointments have been made by the Secretary of the Interior. Since the fifteen member RAC would not have a quorum if a meeting were held it is felt that the scheduled January 21–22, 1999 NM/RAC meeting should be cancelled and rescheduled when the seven vacant positions are filled.

The process of receiving nominations for appointments to the NM/RAC occurred last May and it is those applications that were received that are under consideration now for appointment. Since it is not known when the seven appointments will be made the NM/RAC meeting scheduled for January 21–22, 1999 is cancelled. The next meeting will be rescheduled as soon as appointments are made and arrangements to hold the meeting can be completed.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: January 5, 1999.

M.J. Chavez,

State Director.

[FR Doc. 99–490 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–01: WYW–143438]

Realty Action; Restricted Access to Public Right-of-Way, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public land in Teton County will be closed to public access from March 15 to September 1 of each year to provide a disturbance free area for raptor activity under Section 3 and Section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Sixth Principal Meridian

T. 40 N. R. 116 W.

Section 34, NE¼SW¼.

These lands contain approximately 0.40 acres.

SUPPLEMENTARY INFORMATION: The BLM proposes to put up a gate and sign to restrict public access on the above described land. This closure will protect raptor habitat.

FOR FURTHER INFORMATION CONTACT: Grace Jensen, Realty Specialist, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941, 307–367–5313.

The environmental assessment covering the proposal will be available for review at the Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941.

Upon publication of this notice in the **Federal Register,** the land will be closed at the designated times.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: January 5, 1999.

Leslie Theiss,

Field Manager.

[FR Doc. 99–491 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, January 29, 1999. The meeting will convene at 6:00 p.m. at the Centre culturel du Mont-Carmel, Lille, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

*The implementation of an interpretive program of Acadian culture in the state of Maine.

*The proceedings of a joint meeting with the Maine Acadian Heritage Council.

The Agenda for this meeting is as follows:

1. Review of December 18, 1998, summary report.

2. Speaker: Louis Picard on ''Historic Preservation in Canadian Madawaska.''

3. Report of the National Park Service project staff.

4. Opportunity for public comment.

5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5459.

Dated: December 21, 1998.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 99–477 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mojave National Preserve Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held January 27, 1999; assemble at 9:00 AM at the Hole-in-the-Wall Visitor Center, Mojave National Preserve, California.

The agenda: Update on the General Management Plan and an Overview of Other Park Planning.

The Advisory Commission was established by PL #103–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are:

Michael Attaway
Irene Ausmus
Rob Blair
Peter Burk
Dennis Casebier
Donna Davis
Kathy Davis
Gerald Freeman
Willis Herron
Elden Hughes
Claudia Luke
Clay Overson
Norbert Riedy
Mal Wessel

This meeting is open to the public.

Dennis Schramm,

Acting Superintendent, Mojave National Preserve.

[FR Doc. 99–479 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of the Subsistence Resource Commission for Lake Clark National Park announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission. The public is welcome to attend the meeting. The following agenda items will be discussed:

(1) Chairman's welcome.

(2) Introduction of Commission members and guests.

(3) Review agenda.

(4) Approval of minutes of last meeting.

(5) Old business:

a. Lake Clark National Park Subsistence Plan draft review

b. Subsistence Resource Commission Chair's Workshop report.

(6) New Business:

a. Resource update.

b. Review proposals to change Federal Subsistence Management regulations.

c. National Park Service Subsistence Issue paper.

d. Membership status.

(7) Agency comments and public comments.

(8) Determine time and date of next meeting.

(9) Adjournment.

DATES: January 21, 1999, 10:00 a.m. and 5 p.m.

LOCATION: The meeting location is: Pedro Bay Community Hall, Pedro, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Liggett, Superintendent, Lake Clark National Park and Preserve, 4230 University Drive #311, Anchorage, Alaska 99508. Phone (907) 271–3751.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 99–476 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 1, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 26, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Pulaski County

Land's End Plantation, 1 Land's End Ln., Scott vicinity, 99000044

FLORIDA

Clay County

Memorial Home Community Historic District, Roughly bounded by FL 16, Caroline Blvd., Wilbanks Ave., and Studio Rd., Penney Farms, 99000047

Hernando County

Russell, Judge Willis, House, 201 S. Main St., Brooksville, 99000046

Hillsborough County

Hampton Terrace Historic District, Roughly bounded by Hanna Ave., 15th St., Hillsborough Ave., and Nebraska Ave., Tampa, 99000045

IOWA

Pottawattamie County

Council Bluffs Free Public Library, 200 Pearl St., Council Bluffs, 99000048

LOUISIANA

Concordia Parish

Piazza Cotton Gin, Frogmore Plantation—11656 US 84, Ferriday vicinity, 99000049

MASSACHUSETTS

Worcester County

Ashburnham Center Historic District, Roughly along MA 12 and MA 101 in Ashburnham, Ashburnham, 99000050

MICHIGAN

Kalamazoo County

Climax Post Office Building, 107 N. Main St., Climax, 99000053

Kent County

Aldrich, Godfrey, and White Block, 89–99 Monroe Center, Grand Rapids, 99000052

Wayne County

Lower Woodward Avenue Historic District, 1202–1449 and 1400–1456 Woodward Ave., Detroit, 99000051

MONTANA

Park County

OTO Ranch, 15 mi. N of Gardiner, Gardiner vicinity, 99000054

NEW YORK

Columbia County

Stuyvesant Railroad Station, Riverview Ave., Stuyvesant, 99000055

Greene County

St. Mary's of the Mountain Church, 1NY 23A, Hunter, 99000057

Herkimer County

Salisbury Center Grange Hall, 2550 NY 29, Salisbury Center, 99000056

Oneida County

Pleasant Valley Grange Hall, US 20, 2 mi. W of Pleasant Valley, Pleasant Valley vicinity, 99000058

Queens County

Jackson Heights Historic District, Bounded by Roosevelt Ave., Broadway, Leverich St., Northern Blvd., and 90th St., Queens, 99000059

NORTH CAROLINA

Burke County

Garrou-Morganton Full-Fashioned Hosiery Mills, 101 and 105 Lenoir St., Morganton, 99000064

Dare County

Sam's Diner, 2008 S. Virginia Dare Trail, Kill Devil Hills vicinity, 99000062

Forsyth County

Goler Metropolitan AME Zion Church (African-American Neighborhoods in Northeastern Winston-Salem MPS), 1435 E. Fourth St., Winston-Salem, 99000060

Mars Hill Baptist Church (African-American Neighborhoods in Northeastern Winston-Salem MPS), 1331 E. Fourth St., Winston-Salem, 99000061

Onslow County

Taylor Farm (Onslow County MPS), 337 Comfort Rd., Richlands vicinity, 99000063

OREGON

Jackson County

Beeson-Foss Ranch, 6371 Wagner Creek Rd., Talent, 99000067

Lane County

Morse, Wayne, Farm, 595 Crest Dr., Eugene, 99000066

Multnomah County

Wilson-South House, 2772 NW Calumet Terrace, Portland, 99000065

TEXAS

Harris County

Humble Oil Building, 1212 Main St., Houston, 99000068

VIRGINIA

Botetourt County

Buchanan Historic District, Roughly along Main St., from 19th St. to the intersection of US 81 and Main St., Buchanan, 99000070

Caroline County

Moss Neck Manor, VA 766, S side of Rappahannock R., Rappahannock Academy vicinity, 99000069

Henrico County

Sholom, Emek, Holocaust Memorial Cemetery, 4000 Pilots Ln., Richmond vicinity, 99000072

Isle Of Wight County

Gwaltney, P.D., Jr., House, 304 Church St., Smithfield, 99000075

Northumberland County

Oakley, 28 Back St., Heathsville, 99000073

York County

Gooch, William, Tomb and York Village Archeological Site (Boundary Decrease), Address Restricted, Yorktown vicinity, 99000074

Norfolk Independent City

Lafayette Residence Park, Roughly bounded by Tidewater Dr., Dupont C., Fontainbleau Crescent, La Salle Ave., Orleans C., and Lafayette R., Norfolk, 99000071

Richmond Independent City

Coliseum, The,—Duplex Envelope Company Building, 1339–1363 W. Broad St., Roanoke, 99000077

Roanoke Independent City

Norfolk and Western Railway Company Historic District, 88 and 108 Jefferson St. NW, and 209 Shenandoah Ave., Roanoke, 99000076

[FR Doc. 99–485 Filed 1–8–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Application for transfer of petition 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. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 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:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–455. Adjudications 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. This form will be used by an applicant to request transfer to another court the petition for naturalization in accordance with section 405 of the Immigration and Naturalization Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 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 5, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–544 Filed 1–8–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application to payoff or discharge alien crewman.

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. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection 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:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Application to Payoff or Discharge Alien Crewman.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–408. Inspections Division, Immigration and Naturalizations Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge any alien crewman in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85,000 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,360 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 5, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–545 Filed 1–8–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; notice to student or exchange visitor.

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. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 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:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–515. Adjudications 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. This form will be used to notify students or exchange visitors admitted to the United States as nonimmigrants that they have been admitted without required forms and that they have 30 days to present the required forms and themselves to the appropriate office for correct processing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 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 5, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–546 Filed 1–8–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; supplementary statement for graduate medical trainees.

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. Comments are encouraged and will be accepted for ''sixty days'' until March 12, 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:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Supplementary Statement for Graduate Medical Trainees.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–644. Adjudications 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. This information collection will be used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 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 5, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–547 Filed 1–8–99; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–508]

Washington Public Power Supply System; Washington Nuclear Project Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order terminating Construction Permit No. CPPR–154, which authorized construction of the Washington Nuclear Project Unit 3 (WNP–3), located at Satsop, Washington. This construction permit (CP) is held by the Washington Public Power Supply System (WPPSS) and includes all remaining WNP–3 structures and the Washington Nuclear Plant Unit 5 (WNP–5) structures that were subsumed in the WNP–3 construction permit following expiration of the WNP–5 Construction Permit No. CPPR–155, which was issued on April 11, 1978, Docket No. 50–509.

Termination of the CP was requested by WPPSS by letter dated August 8, 1996, as supplemented by letters dated June 15 and November 5, 1998. In a related matter, on August 16, 1998, WPPSS filed a motion for withdrawal of its application for an operating license (OL) for WNP–3 and for termination of the proceeding on that application before the Atomic Safety and Licensing Board (ASLB). The ASLB approved the withdrawal of the OL application and terminated the proceeding on October 16, 1996, noting that the staff would prepare an adequate EA on the CP termination and that the impacts addressed there would encompass the OL termination impacts, thus obviating the need for a separate EA on OL termination, 44 NRC 134 (1996).

Environmental Assessment

Identification of the Proposed Action

The proposed action is issuance of an order that would terminate Construction Permit No. CPPR–154 for WNP–3. WPPSS has decided to terminate the CP of the partially completed, and previously deferred, WNP–3 project. Recent changes in Washington State law (RCW 80.50.300) have made it possible to transfer ownership of WNP–3 and WNP–5 to an interlocal agency, the Satsop Redevelopment Project (SRP), formed by Grays Harbor County, the Port of Grays Harbor, and the Grays Harbor Public Utilities District. This new agency will not complete the project as a nuclear power plant; rather, SRP plans to own and operate the site and certain structures for economic development purposes.

WPPSS has entered into an agreement to transfer ownership of the 1600-acre Satsop site to the SRP, or its successor, for conversion of the site to an industrial, business, or research park. Under the agreement, 22 acres (with an option to acquire an additional 20 acres) are to be maintained under the ownership of WPPSS for a combustion turbine energy facility project.

The plant island area of the site includes the cooling towers, reactor auxiliary buildings, reactor buildings, turbine building, and the administration building for WNP–3 and WNP–5. None of these structures are scheduled for demolition. The WNP–3 reactor building and reactor auxiliary building will be secured by the installation of permanent doors and the closure of building openings. The equipment located within these buildings will be removed to the extent practical. Service systems, such as lighting, communications, fire protection, and electrical service, will remain operational. The partially complete WNP–5 reactor auxiliary building is planned to be enclosed by the completion of the grade-level floor slab. The WNP–5 reactor building will be reconfigured to serve as the site's raw water supply storage facility. The WNP–3 and WNP–5 turbine building will be cleared of the turbine generator and related systems. Service systems within the turbine building will remain operational. The disposition of the cooling towers is uncertain; current plans are to keep them as they are. The administration building, fire protection building, water treatment facility, blowdown building area, north and south tank farms, and the 230 kV electrical supply system will be retained for future use. Warehouses, buildings, material storage yards, and parking lots that were developed to support the construction of the plant are supplied by service systems and will be retained or upgraded to support future commercial development. Any temporary buildings and facilities not identified for potential future use will be removed along with their foundations. Developed property and laydown yards will be cleared. The existing raw water well will be maintained as a source of potable water and the Ranney well field will remain as a source of process water for the Satsop site, including the Combustion Turbine Project. The barge unloading facility will remain for use by the SRP.

The staff inspected the Satsop site on October 27–28, 1998, to determine if possession of source, byproduct, or special nuclear material was controlled as authorized and if the site is being maintained in a safe and stable manner, and to assess key environmental aspects of the site. The inspectors observed selected portions of the Ranney wells, barge slip, cooling towers, and other site buildings. The inspectors also observed that erosion controls were being maintained.

The site cannot be used as a utilization facility. No nuclear fuel was ever received on site. The Satsop site is in an environmentally stable condition that poses no significant hazard to persons on site, and the plant cannot be operated in its present condition.

Need for the Proposed Action

WPPSS has terminated construction of the nuclear power plant and has disabled the facility so that it cannot be operated as a utilization facility. WPPSS intends to transfer the site to the SRP for use as an industrial, business, or research park, with the exception of 22 acres and an option to acquire an additional 20 acres for use as an energy facility operated by WPPSS. This action would terminate the construction permit.

Environmental Impacts of the Proposed Action

This is a simple administrative action of terminating the construction permit to reflect the fact that there are no longer utilization facilities under construction at the Satsop site and that the site has been adequately stabilized. This action has no environmental impact.

Alternatives to the Proposed Action

There are no viable alternatives with respect to the proposed action.

Alternative Use of Resources

This action, for which there are no appropriate alternatives, does not involve the use of, and therefore will not affect, available resources.

Agencies and Persons Consulted

In accordance with its stated policy, on October 28 and November 3, 1998, the staff consulted with the Washington State official, Deborah J. Ross of the Energy Facility Site Evaluation Council, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's request for termination of Construction Permit No. CPPR–154, dated August 8, 1996, additional information submitted by letter dated June 15, 1998, WPPSS's ''Satsop Power Plant Scope of Restoration'' transmitted by letter dated November 5, 1998, and the NRC staff's inspection report dated November 2, 1998. These documents regarding the NRC staff's environmental assessment of the proposed action are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 4th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–507 Filed 1–8–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26964]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 5, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 26, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 26, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70–9417)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 54 under the Act.

NEES proposes to form one or more new special purpose subsidiaries to acquire interests in office and warehouse space (''Real Estate Interests'') that would be leased only to associate companies for their business purposes. All leases of Real Estate Interests will comply with rules 87, 90 and 91 under the Act.

NEES currently contemplates indirectly acquiring two facilities (''Facilities''), currently leased under long-term lease agreements (''Agreements'') to two NEES subsidiaries, from John Hancock Life Insurance Company (''Owner''). The first Facility, consisting of office and warehouse space and adjacent real estate, is under lease to Massachusetts Electric Company (''MEC''), an electric utility subsidiary company of NEES. The second Facility, consisting of an office complex that serves as NEES' headquarters and adjacent real estate, is under lease to New England Power Service Company (''Service Company''), a service company subsidiary of NEES. After its acquisition from the Owner, each Facility will be leased back to MEC or the Service Company, as the case may be, for the remainder of the term provided for in the Agreement for that Facility and under the same terms and conditions.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–472 Filed 1–8–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collection package(s) that will require submission to the Office of Management and Budget (OMB). Following is an information collection package for which we are seeking an extension of the OMB approval:

Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0556. Schedule SSA is a form filed annually with the Internal Revenue Service (IRS) by pension plan administrators as part of a series of pension plan documents required by Section 6057 of the IRS Code. IRS forwards Schedule SSA to the Social Security Administration, which maintains it until a claim for social security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for private plan benefits.

Number of Respondents: 107,174.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 30,366 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated

collection techniques or other forms of information technology.

To receive a copy of any of the forms listed above, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the above address.

Dated: January 1, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–521 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–29–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4448]

Mariner Licensing and Documentation

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period.

SUMMARY: The Coast Guard's National Maritime Center (NMC) is extending the comment period on the issue of Mariner Licensing and Documentation. The original public notice, published September 21, 1998, requested comments on the feasibility of privatizing examinations for mariner licenses and merchant mariner documents in the Coast Guard's Mariner Licensing and Documentation (MLD) program. We are extending the comment period to allow the public more opportunity to comment on this subject.

DATES: Comments must reach the Docket Management Facility on or before March 1, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility (USCG–1998–4448), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Albert G. Kirchner, Jr., National Maritime Center, U.S. Coast Guard, 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203–1804, telephone 703–235–1950. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard received several requests to extend the comment period at the public meeting held in New Orleans in order to allow the public and the testing industry more opportunity to examine the issues. The Coast Guard encourages you to participate in this request by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this notice (USCG–1998–4448) and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

Although the Coast Guard has not scheduled another public meeting concerning this subject, you may request another public meeting by submitting a request to the address under **ADDRESSES.** The request should include the reasons why another meeting would be beneficial. If we determine that another public meeting should be held, we will hold the meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In November 1993, we produced a focus group report, ''Licensing 2000 and Beyond.'' This report recommended adopting new methods of verifying the competency of mariners in our Mariner Licensing and Documentation (MLD) program. The report also recommended that we consider employing commercial service providers that specialize in examination administration and testing using advanced technology. A copy of this report is available for inspection in the docket at the address listed under **ADDRESSES.**

As a result of this focus group report, we published a final rule (61 FR 47060) on September 6, 1996, enabling us to implement alternative examination and evaluation systems, and to modernize our examination methods. As part of our considerations about developing any alternative examination and evaluation system, we held a public meeting in New Orleans, Louisiana, on October 22 and 23, 1998 which was announced in the **Federal Register** on September 21, 1998 (63 FR 50439). The goal of this public meeting was to help us research business issues and opportunities associated with employing commercial service providers to administer our MLD examinations (outsourcing). A summary of these issues is available in the docket at the address listed under **ADDRESSES.** The issues discussed at the public meeting are as follows:

1. Feasibility of MLD outsourcing;
2. Service possibilities and cost implications to the mariner;
3. System integrity and privacy of records;
4. Elements and sequencing considerations of MLD outsourcing;
5. Options and arrangements for outsourced service delivery;
6. Resource and oversight requirements;
7. Experience of other agencies and professional organizations; and
8. Valuable lessons of others.

Definitions

The following definitions should help you review this notice and provide comments.

Fourth Party means someone, other than the Coast Guard or designated Third Party, who administers an examination or makes an objective judgement about the competency of mariners.

Outsourcing means using the private sector to deliver certain services or functions for the government, with some degree of government involvement.

Privatization means a complete transfer of a government service or function to the private sector without further involvement of the government.

Third Party means someone, other than the Coast Guard, who trains or teaches mariners.

Since the publication of the original notice requesting comments on using commercial service providers to administer MLD examinations, the direction of this type of examination process has evolved. The process we now envision is more accurately termed ''outsourcing.'' The original MLD notice and the supporting documents located in the docket use the term ''privatization.'' Since we plan maintaining the examination database and developing and implementing an oversight mechanism to ensure the

integrity of the examination system and private records, this and any future publications on this topic will use the term ''outsourcing'' instead of ''privatization.''

Issues and Questions

We are seeking information that will help us consider whether outsourcing examinations in our MLD program is feasible and what other alternatives are available. Any comments, concerns, issues, and written data should address the business aspects of outsourced examination systems. We encourage you to review the supporting documents and past written comments to help you in submitting comments. The documents and comments are located in the docket at the address listed under **ADDRESSES.**

Please submit any comments, information, or data to the docket at the address under **ADDRESSES.**

The Coast Guard needs feedback on the following issues:

1. *Feasibility of MLD outsourcing.* Before we can decide whether or not to implement an outsourced examination system, we need to determine its feasibility and if it's in the best interest of both the Coast Guard and mariners. The core business information we presented at the public meeting in New Orleans is available for review in the docket and will help commercial service providers to determine whether the administration of MLD examinations is a potentially attractive business opportunity. We are seeking information from commercial service providers in the training industry about the levels of automation they would employ for such a system, and their ability to provide quality services to mariners that are affordable, yet profitable.

- Is outsourcing mariner licensing and documentation examinations feasible and profitable for commercial service providers?
- What is the most efficient way to transition from the current system to an outsourced system?

2. *Service possibilities and cost implications to the mariner.* We are seeking information and cost estimates from the commercial training and examination industry.

- How could better, more responsive examinations systems be delivered to mariners?
- How are the costs for outsourcing examination systems determined?
- What are the three greatest factors affecting cost?
- What are the ''break even'' points associated with these cost estimates?

3. *System integrity and privacy of records.* One of our primary concerns about outsourcing our MLD examinations is the potential for compromising the integrity of our current system. Another significant concern is maintaining the highest level of protection of private information and records.

- What capabilities do commercial service providers have to ensure the integrity of the examination system and private records?
- How do you address similar concerns with your current clientele?

4. *Elements and sequencing considerations of MLD outsourcing.* Since the core MLD activity we would outsource is the conducting of the actual licensing and documentation examinations, we are seeking information about the timing and sequence for implementing an outsourced examination system.

- How do commercial providers implement an outsourced examination system?
- How long would the transition take?
- What staff training is required?
- What site preparations are necessary?
- How would the new examination system interface with our random examination generating capability?

5. *Options and arrangements for outsourced service delivery.* There are a number of possible ways we can structure our outsourced MLD examination system. These possibilities, each with their own advantages and disadvantages, are as follows:

- Awarding competitive no-cost contracts to a single, nation-wide provider;
- Awarding a competitive no-cost contract to an unlimited number of ''qualified'' service providers;
- Allowing the current Regional Examination Centers (RECs) to operate as Government-owned, Contractor-operated (GO–CO) facilities, or to convert entirely to Contractor-owned, Contractor-operated (CO–CO) facilities; or
- Expanding our present training course instead of examination program until mariners can obtain every Coast Guard license and document through this program. For more information regarding this program please see 46 CFR part 10.

We are seeking information about range of options and arrangements available for outsourced examination systems.

6. *Resource and oversight requirements.* Before we decide if outsourcing our MLD examinations adds value to our program, we must weigh the costs against the benefits. Outsourcing the MLD examinations would shift many of our current costs to the commercial service provider(s), causing us to reconfigure our remaining costs. One of our remaining costs would come from developing and maintaining an active and effective oversight mechanism to ensure the integrity and security of the examination system and private records. We need to learn more about how commercial service providers determine the resources we would need to conduct oversight of an outsourced examinations system.

- What considerations should we take into account in developing an oversight mechanism for an outsourced examination system?
- What resources would we need to implement an oversight mechanism?

7. *Experience of other agencies and professional organizations.* We are seeking views and information from other agencies that currently outsource an examination system for critical professional examinations. We are also interested in learning information from those who have helped others successfully put these types of systems in place.

8. *Valuable lessons of others.* Finally, we would like to hear from anyone who is willing to share ''lessons learned'' in making the decision whether or not to outsource a professional qualifications or competency system similar to our MLD licensing and documentation examinations.

- What is the most effective way to make cost calculations and comparisons of outsourced examinations systems?
- What contractual provisions and specifications should we consider if we decide to outsource the MLD examinations?
- What information should we consider in developing and implementing audit and oversight mechanisms?
- What type of quality control techniques and performance metrics have proven most reliable in an outsourced examination system?

Dated: January 4, 1999.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–537 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4951]

Cargo Securing on Vessels Operating in U.S. Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard will hold a public meeting to discuss potential cargo securing standards for vessels operating in U.S. waters carrying general cargo and hazardous materials while engaged in international and U.S. domestic coastwise trade. Potential standards would reduce the risk of serious injury or death, vessel loss, property damage, and environmental damage caused by improperly secured cargo aboard a vessel. The Coast Guard encourages interested parties to attend the meeting and submit comments for discussion during the meeting. In addition, the Coast Guard seeks written comments from any party who is unable to attend the meeting.

DATES: The Coast Guard will hold this public meeting on February 3, 1999, from 12 p.m. to 4 p.m. This meeting may close early if all business is finished. Written material for discussion during the meeting should reach the Docket Management Facility on or before January 29, 1999. Other written comments must reach the Docket Management Facility on or before February 28, 1999.

ADDRESSES: The Coast Guard will hold this public meeting at the U.S. Coast Guard Headquarters Transpoint Building, room 2415, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–1181. You may mail your comments to the Docket Management Facility (USCG–1998–4951), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Bob Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), Coast Guard, telephone 202–267–1053. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–4951), and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Bob Gauvin at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

Several maritime incidents during the early 1990's underscored the risk of serious injury or death, vessel loss, property damage, and environmental damage caused by improperly secured cargo abroad vessels. The most well-known incident occurred off the New Jersey coast in early 1992. The incident involved the M/V SANTA CLARA I, which lost 21 containers overboard, including 4 containers of the hazardous material arsenic trioxide.

The Coast Guard convened a Board of Inquiry to investigate the M/V SANTA CLARA I incident. The Board found that the incident was caused by cargo securing failures in connection with bad weather and human error. Based on its findings, the Board recommended adopting the International Maritime Organization (IMO) voluntary guidelines on cargo securing manuals as regulations in the International Convention for the Safety of Life at Sea, 1974 (SOLAS). The Commandant approved the Board's recommendation. With the support of other IMO member governments, the U.S. led a proposal to include new requirements for cargo securing manuals in SOLAS. These requirements were adopted as part of the 1994 amendments to SOLAS. These requirements are located in SOLAS Chapters VI/5.6 and VII/6.6.

Under SOLAS, all cargo vessels engaged in international trade and equipped with a cargo securing system or an individual securing arrangement must have an approved cargo securing manual on board by December 31, 1997. The vessel's flag state administration must approve the cargo securing manual. Under SOLAS and Title 46, Code of Federal Regulations (CFR) 90.05–10, these requirements for a cargo securing manual apply to all U.S. flag cargo vessels of 500 gross tons or more, engaged in international trade. Vessel types affected include general cargo vessels, cellular containerships, roll-on/roll-off vessels, passenger/cargo vessels, supply vessels, bulk vessels capable of carrying non-bulk cargo, heavy lift ships, freight ships carrying packaged or break-bulk cargoes, and other similar vessels. Any vessel engaged solely in the carriage of bulk solids or liquid cargo is exempt from the requirements for a cargo securing manual.

Approved cargo securing manuals must provide up-to-date information and guidance to assist a vessel's master and crew regarding the proper use of the equipment available to adequately stow and secure the vessel's cargo.

Navigation and Vessel Inspection Circular 10–97 (NVIC 10–97), ''Guidelines for Cargo Securing Manual Approval'', provides interim guidance for U.S. flag vessel compliance with the SOLAS requirements for a cargo securing manual. The NVIC includes interim cargo securing manual submittal, review, approval, and appeal procedures. A copy of the NVIC is available in the public docket or in the Internet at http://www.uscg.mil/hq/g-m/nvic/.

Problems with cargo securing are not limited to vessels engaged in international trade. There have been a number of cargo-related marine casualties (such as loss overboard of containerized hazardous material) involving U.S. flag vessels engaged in U.S. domestic coastwise trade. The majority of domestic marine casualties were caused by poor cargo securing methods, inadequate equipment, and poor planning and management of cargo

securing personnel. Because of this trend and the resulting risk to the public and the environment, the Coast Guard is considering the need for cargo securing requirements for U.S. vessels engaged in U.S. domestic coastwise trade.

Public Meeting

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard point of contact listed under **FOR FURTHER INFORMATION CONTACT** no later than January 29, 1999.

The Coast Guard will begin the public meeting with a brief presentation discussing the primary causes and contributing factors of cargo-related marine casualties occurring in U.S. waters during the last 5 years. The presentation will highlight the need to comply with and enforce applicable SOLAS regulations for vessels engaged in international trade, and explore potential standards for vessels engaged in U.S. domestic coastwise trade.

Dated: January 5, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Envionmental Protection.

[FR Doc 99–535 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the South Corridor Transitway, Charlotte, NC

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the City of Charlotte intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on the proposed South Corridor Transitway in Mecklenburg County, North Carolina. The study corridor of approximately 13.5 miles extends from Uptown Charlotte (the center city) to the Town of Pineville.

The EIS will evaluate the following alternatives: a No-Build alternative; a Transportation System Management alternative consisting of low to medium cost improvements to the facilities and operation of local bus services (Charlotte Transit) in addition to currently planned transit improvements in the study corridor; and multiple ''Build'' alternatives including light rail transit, diesel multiple units, bus rapid transit, and combined bus rapid transit and high-occupancy vehicle facilities. (See Section III. Alternatives for additional information.) Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies, and through public and agency meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the City of Charlotte by March 1, 1999. See **ADDRESSES** below. *Scoping Meetings:* A public scoping meeting will be held on Wednesday January 27, 1999 from 5:00 p.m. to 9:00 p.m. at the Sedgefield Middle School located at 2700 Dorchester Place, Charlotte, NC. See **ADDRESSES** below.

ADDRESSES: *Written comments* on the scope of alternatives and impacts to be studied should be sent to Mr. Rick Davis, City of Charlotte Corporate Communications, 600 East Fourth Street, Charlotte, NC 28202–2858. *Scoping meetings* will be held at the following location: Sedgefield Middle School, 2700 Dorchester Place, Charlotte, NC. See **DATES** above.

FOR FURTHER INFORMATION CONTACT: Ms. Myra Immings, Federal Transit Administration, Region IV, (404) 562–3508.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and the City of Charlotte invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated and identifying any significant social, economic, or environmental issues related to the alternatives. Specific suggestions related to additional alternatives to be examined and issues to be addressed are welcome and will be considered in the final scope. Scoping comments may be made at the scoping meetings or in writing no later than March 1, 1999. (see **DATES** and **ADDRESSES** above). During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or less environmentally damaging which achieve similar transit objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative.

Scoping materials will be available at the meeting or in advance of the meeting by contacting the City of Charlotte as indicated above. If you wish to be placed on the mailing list to receive further information as the project continues contact Mr. Rick Davis at the City of Charlotte Corporate Communications (see **ADDRESSES** above).

II. Description of Study Area and Project Need

The proposed project consists of a major public transit investment in the South Corridor of the Charlotte-Mecklenburg region. The project corridor length is approximately 13.5 miles and extends from Uptown Charlotte (the center city) to the Town of Pineville. The project study area is generally bounded by Interstate 77 (I–77) on the west, and US 521 (South Boulevard) on the west, and includes the Norfolk Southern rail line. Land uses in the study corridor are characterized by higher density office and commercial development at the northernmost portion of the corridor located in the center city; the remainder of the corridor has predominantly older, low density strip commercial, light industrial/manufacturing uses, with the southern portion having a mixed use character of residential, commercial, and some undeveloped tracts of land.

The South Corridor Transitway project is a direct outgrowth of prior transit planning activities for the region. Future growth projections for the region estimate a population increase of 57 percent and a 47 percent increase in employment by the year 2025. The 2025 Integrated Transit-Land Use Plan for Charlotte-Mecklenburg identified the South Corridor as a high-priority transit corridor based on current and future mobility needs, cost feasibility and potential ridership.

The South Boulevard corridor (US 521) and portions of I–77 within the study area experience severe congestion and delays and are considered to be one of the major transportation problems facing this rapidly growing region. The North Carolina Department of Transportation (NCDOT) estimates that neither of these facilities will be widened within the next 15–20 years because of costs and other impacts. Currently, South Boulevard, a four-lane arterial, is rated as having very poor mobility and with the projected increase in future traffic volumes, travel conditions will continue to deteriorate. Past studies performed in accordance with federal guidelines indicate the need for increased public transit

services in addition to roadway facilities in the Charlotte-Mecklenburg region.

In response to this need, the City of Charlotte in conjunction with FTA is initiating the scoping phase of the EIS process to evaluate alternative transit options for the South Corridor.

III. Alternatives

The alternatives proposed for evaluation include: (1) No-build, which involves no change to transportation service or facilities in the corridor beyond already committed projects; (2) a Transportation System Management alternative, which consists of low to medium cost improvements to the operations of the local bus service, Charlotte Transit, in addition to the currently planned transit improvements in the corridor; and multiple ''build'' alternatives including (3) light rail transit (LRT) located within the existing Norfolk Southern rail right of way and the South Boulevard (US 521) right of way; (4) diesel multiple units (DMU) located in the existing Norfolk Southern rail right of way; (5) bus rapid transit (BRT) using exclusive bus-only roadways in the project corridor including those constructed within the existing Norfolk Southern rail right of way and the I–77 right of way; (6) combined BRT and high-occupancy vehicle (HOV) facilities using the I–77 right of way.

IV. Probable Effects

FTA, NCDOT, and the City of Charlotte will evaluate all significant social, economic, and environmental impacts of the alternatives analyzed in the EIS. Primary environmental issues are expected to include neighborhood protection, aesthetics, environmental justice, potential contamination sites, changes in traffic patterns, potential archaeological and historic resources, and possibly some natural areas and wetlands. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations and throughout the project corridor, visual impacts, cultural and community resource impacts, public recreational facility impacts, noise and vibration impacts, and air quality impacts. In addition, adverse impacts to underprivileged social groups will be considered. Impacts to wetlands, natural areas, rare and endangered species, water quality and potential contamination sites will be evaluated. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate any significant adverse impacts will be developed.

Issued on: December 31, 1998.

George T. Thomson,

Deputy Regional Administrator.

[FR Doc. 99–539 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3701; Notice 2]

Mitsubishi Motor Sales of America Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Mitsubishi Motor Sales of America (MMSA) of Cypress, California, has determined that some of its 1994–1998 models fail to meet the requirements of paragraph S4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 118, ''Power-operated window, partition, and roof panel systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defects and Noncompliance Reports.'' MMSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

A notice of receipt of an application was published in the **Federal Register** (63 FR 28024) on May 21, 1998. Opportunity was afforded for comments until June 28, 1998. No comments were received.

During the periods indicated below, the applicant imported and sold or distributed approximately 57,294 vehicles equipped with power sunroofs that did not meet certain requirements mandated by FMVSS No. 118. Specifically, paragraph S4 of FMVSS No. 118 requires that power windows, partitions, and sunroofs be closed only under certain circumstances. One of those circumstances is that a power sunroof may be closed:

> * * * during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

In the Mitsubishi vehicles identified below, activation of the power sunroof stops immediately after the ignition is turned off and the driver's side door is open. The sunroof continues to operate, however, for thirty seconds after the ignition is turned off and the passenger front door is opened. This continued operation does not comply with the requirements of S4 of FMVSS No.118.

Make	Line	Model year	No. of affected vehicles	Dates of manufacture
MMC	Mitsubishi 3000GT	94 to 98	5,855	5/94–4/98
MMC	Mitsubishi Mirage (Coupe and Sedan)	97 to 98	1,383	6/96–5/98
Mitsubishi Motor Manufacturing of America, Inc.	Mitsubishi Galant	94 to 98	50,056	3/93–3/98

NHTSA agrees with MMSA's arguments in support of its application for inconsequential noncompliance. That discussion was published in the **Federal Register** (63 FR 28024) on May 21,1998. Essentially, NHTSA agrees with MMSA that FMVSS 118 sets forth requirements for power operated windows, partitions, and roof panel systems (e.g., sunroofs) to minimize the risk of injury or death from accidental operation of these systems and that FMVSS 118 S4(e) was designed to reduce the possibility of unsupervised children operating the power windows, partitions or sunroofs in a vehicle. It is expected that after a vehicle's ignition is turned off, but prior to opening either of the vehicle's front doors, an adult will remain in the vehicle to supervise and protect children from the safety risks associated with operation of a power window, partition, or sunroof system. Hence, there should be no additional risk in allowing continued operation of the power window, partition or sunroof after the ignition is turned off but prior to the opening of either front door because of the presence of the supervising adult. As MMSA said, ''This premise is especially true for the driver side door. In most circumstances, an adult driver normally exits the vehicle from the driver side door. If the vehicle's driver side door has not been opened, the adult driver is most likely still in the vehicle.'' It further states that the probability of *unsupervised* children being exposed to injury from the

foregoing sunroof system during the 30 seconds after the ignition key has been turned off and the front passenger door only is opened is extremely remote. NHTSA agrees that this is a reasonable argument regarding this particular situation.

Additionally, MMSA asserted that the situation is similar to another situation involving vehicles manufactured by Volkswagen of America, Inc. (Volkswagen). In Volkswagen's case, the company manufactured approximately 20,000 vehicles with power windows. The power windows ceased to operate immediately after the ignition was turned off and the driver's side door was opened. The windows continued to operate, however, for ten minutes after the ignition was turned off and the front passenger door only was opened. Volkswagen petitioned the agency for a determination of inconsequential noncompliance [See 60 FR 26475 (1995)]. NHTSA granted the petition based on reasons similar to those offered by MMSA [See 60 FR 48197 (1995)].

NHTSA agrees with MMSA that its situation is similar to the Volkswagen situation. In that situation, the vehicles also were passenger cars, the same vehicle type as the Mitsubishi vehicles. In NHTSA's opinion, the driver was unlikely to exit the vehicle by moving over the transmission hump/console and going through the passenger door in a passenger vehicle. The agency reasoned that drivers were only likely to exit through the driver's door. When they did so, with the key in the off position, the power windows would cease to operate. The fact that the power windows would continue to operate when only the passenger side door opened occurred was deemed to be inconsequential, because the driver would still be present and in control of the vehicle. On the other hand, a similar situation occurred with the Nissan Quest and Mercury Villager vehicles, but NHTSA decided that the noncompliance was consequential to safety. The significant difference is that the Nissan and Mercury vehicles are minivans. Drivers are more likely to exit through the passenger door of a minivan because of the added interior space and because any transmission hump/console is not nearly such an obstacle in a minivan.

In view of the two arguments offered by MMSA and reviewed by NHTSA, the agency does not deem this specific issue to be a serious safety problem warranting a safety recall. Accordingly, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety. Therefore, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance as required by 49 U.S.C. 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 5, 1999.

Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–538 Filed 1–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20942]

Laidlaw, Inc. et al.—Control and Merger—D–A–R Transit Systems, Inc. d/b/a Galaxy Charters et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance application.

SUMMARY: Laidlaw, Inc. (Laidlaw or applicant), a noncarrier that currently controls seven interstate motor passenger carriers, has filed an application under 49 U.S.C. 14303 to acquire control of four additional motor passenger carriers and ultimately to merge the carriers into existing Laidlaw affiliates. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182 (effective October 1, 1998). The Board has tentatively approved the transaction and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 25, 1999. Applicant may file a reply by March 12, 1999. If no comments are filed by February 25, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20942 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Mark J. Andrews, Barnes and Thornburg, Suite 500, 1401 Eye Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Laidlaw currently controls seven interstate motor passenger carriers [1] and three intrastate or regional carriers not subject to federal economic regulation.[2] A notice published in *Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.,* STB Docket No. MC–F–20940 (STB served Dec. 17, 1998) (63 FR 69710) tentatively approved the merger of Greyhound Lines, Inc. into Laidlaw's wholly owned subsidiary, Laidlaw Transit Acquisition Corp., to become effective February 1, 1999.[3]

Laidlaw is seeking Board approval under 49 U.S.C. 14303 for several control, merger and consolidation transactions by which Laidlaw proposes to acquire four additional interstate motor carriers: (1) A company formerly known as CAR Enterprises Ltd. of Grayslake, IL (CAR), which has a successor-in-interest known as Laidlaw Transit Services (Two), Inc. of Burlington, Ontario (Transit Two) (MC–163344); (2) D–A–R Transit Systems, Inc. d/b/a Galaxy Charters of Crystal Lake, IL (DAR) (MC–311766); (3) Voyageur Colonial Limited of Montreal, Quebec (Voyageur), including two successors-in-interest: 1327130 Ontario Limited of Toronto, Ontario (1327130 Ontario)[4] and 3552926 Canada Inc. of Burlington, Ontario (3552926 Canada) (MC–83928); and (4) 1128570 Ontario Ltd. (1128570 Ontario) and its sole stockholder, Ms. Gisele Rockey (Rockey) d/b/a Northern Escape Tours (Escape), and its successor-in-interest: 1327172

[1] Laidlaw's federally regulated affiliates are: Greyhound Canada Transportation Corp. (GCTC) (MC–304126), which is not currently affiliated with Greyhound Lines, Inc.; Laidlaw Transit, Inc. (MC–161299); Laidlaw Transit Ltd. (MC–102189); Roesch Lines, Inc. (Roesch) (MC–119843); Safe Ride Services, Inc. (Safe Ride) (MC–246193); Vancom Transportation-Illinois, L.P. (MC–167816); and Willett Motor Coach Co. (Willett) (MC–16073).

[2] Laidlaw's other motor transportation affiliates are: Empex Ventures, Inc. (California); Laidlaw Transit Services, Inc. (Minnesota and the Washington Metropolitan Area Transit Commission) (LTSI); and The Dave Companies, Inc. (California and Minnesota).

[3] Greyhound holds nationwide, motor passenger carrier operating authority under Docket No. MC–1515, and controls, directly or indirectly, the following ten regional motor passenger carriers: Continental Panhandle Lines, Inc. (MC–8742); Valley Transit Co., Inc. (MC–74); Carolina Coach Co., Inc. (MC–13300); Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120); Vermont Transit Co. Inc. (MC–45626); Los Rapidos, Inc. (MC–293638); Americanos U.S.A., L.L.C. (Americanos) (MC–309813); Gonzales, Inc. d/b/a Golden State Transportation (Gonzales) (MC–173837); PRB Acquisition LLC (MC–66810); and Autobuses Amigos, L.L.C. (Amigos) (MC–340462–C).

[4] Allegedly, Voyageur's authority would be transferred to 1327130 Ontario.

Ontario, Ltd. (1327172 Ontario) (MC–231298).[5]

Board approval is also sought under 49 U.S.C. 14303 for (1) the prospective merger of Transit Two and DAR into LTSI; (2) the prospective consolidation of operations and assets of Voyageur into GCTC; and (3) the consolidation of operations and assets of 1128570 Ontario into GCTC. Applicants state further that the interstate operating authorities of DAR, Voyageur and Escape would be surrendered as duplicative.

Applicant states that the operations of CAR and DAR have historically consisted primarily of municipal transit services in the Chicago, IL area, which is not subject to federal authority, and that the operations of Voyageur and Escape have consisted of regular-route and charter operations conducted primarily within Canada. Applicant further states that CAR/Transit Two, DAR, Voyageur and Escape do not hold intrastate authority. Applicant further states that these transactions will not significantly increase its current share of the North American markets for municipal transit/paratransit and intercity/tourism operations by passenger motor carriers. In each of these markets, applicant states that its current share is approximately 2%.

Applicant states that the transactions will not reduce competition in the regulated bus industry or competitive options available to the traveling public in the U.S. Applicant indicates that most of its current operations are unregulated, and/or take place outside the U.S. Applicant acknowledges, however, that this situation would change after its proposed acquisition of Greyhound that has been tentatively approved in STB Docket No. MC-F–20940. Applicant indicates, however, that it will continue to face substantial competition from other bus companies and transportation modes in the United States.

Laidlaw contends that the proposed transactions will produce substantial benefits, including interest cost savings from restructuring of debt and reduced operating costs from applicant's enhanced volume purchasing power. Applicant claims that the carriers it will acquire will benefit from the lower insurance premiums it has negotiated and from volume discounts for equipment and fuel. Applicant also asserts that it improves the efficiency of all acquired carriers, while maintaining responsiveness to local conditions, by providing centralized services to support decentralized operational and marketing managers. Centralized support services are provided in such areas as legal affairs, accounting, purchasing, safety management, equipment maintenance, driver training, human resources and environmental compliance. In addition, applicant states that it facilitates vehicle sharing arrangements between acquired entities, so as to ensure maximum utilization and efficient operation of equipment. According to applicant, the involved transactions offer ongoing benefits for employees of acquired carriers not only because of the efficiencies described above, but also because applicant's policy is to honor all collective bargaining agreements of acquired carriers.

Applicant asserts that the aggregate gross operating revenues from interstate operations of the operations of carriers to be acquired and all of Laidlaw's affiliated motor carriers exceeded $2 million for the 12-month period prior to the date of the earliest agreement covered by the application. Applicant certifies that none of its current affiliates nor any of the carriers it proposes to acquire has been assigned a safety fitness rating of less than satisfactory by the U.S. Department of Transportation.[6] Applicant further certifies that all involved carriers maintain sufficient liability insurance and that none of the involved carriers has been or is either domiciled in Mexico or owned or controlled by persons of that country.

Under 49 U.S.C. 14303(b), the Board must approve and authorize transactions it finds consistent with the public interest, taking into account at least: (1) The effect of the transactions on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed transactions are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no timely comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available at our website at: ''WWW.STB.DOT.GOV.''

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The above-described transactions are approved and authorized, subject to the timely filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 25, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on (1) the U.S. Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20530 and (2) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024.

Decided: January 4, 1999.

By the Board, Chairman Morgan, Vice Chairman Owen and Commissioner Clyburn.

Vernon A Williams,

Secretary.

[FR Doc. 99–566 Filed 1–8–99; 8:45 am]

BILLING CODE 4915–00–P

[5] Applicant indicates that the shares of Transit Two, DAR and 1327172 Ontario are currently being held in separate, independent voting trusts and shares of 1327130 Ontario will be placed in a voting trust, if necessary.

[6] According to the application, Laidlaw's current affiliates, GCTC, Roesch, Safe Ride and Willet have satisfactory ratings; Laidlaw's other affiliates are unrated. Of the companies to be acquired, Voyageur has a satisfactory rating; the other companies are unrated.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of Citizen Advocacy Panel.

SUMMARY: An open meeting of the Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Friday, January 22, 1999 and Saturday, January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, January 22, 1999 from 7:00 pm to 9:00 pm and Saturday, January 23, 1999 from 9:00 am to 1:00 pm, in Room 225, CAP Office, 7771 W. Oakland Park Blvd., Sunrise, Florida 33351. The public is invited to make oral comments from

10:00 am to 11:00 am on Saturday, January 23, 1999. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 4, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–453 Filed 1–8–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: ''Land of the Winged Horsemen: ART IN POLAND, 1572–1764''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Land of the Winged Horsemen: Art in Poland, 1572–1764,'' imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed objects at The Walters Art Gallery, Baltimore, MD, from on or about March 2,1999, to on or about May 9, 1999, at the Art Institute of Chicago, Chicago, IL from on or about June 5, 1999, to on or about September 6, 1999, at the Huntsville Museum of Art, Huntsville, AL, from on or about September 25, 1999, to on or about November 28, 1999, at the San Diego Museum of Art, San Diego, CA from on or about December 18, 1999, to on or about February 27, 2000, and the Philbrook Museum of Art, Tulsa, OK, from on or about March 25, 2000, to on or about June 18, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 4, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–509 Filed 1–8–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: ''The Museum as Muse: Artists Reflect''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''The Museum as Muse: Artists Reflect,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at The Museum of Modern Art, New York, NY, from on or about March 10, 1999, to on or about June 1, 1999, and at the Museum of Contemporary Art, San Diego, in LaJolla, California, from on or about September 26, 1999, to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 5, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–508 Filed 1–8–99; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Monday
January 11, 1999

Part II

Department of Health and Human Services

Revision of HHS National Environmental Policy Act Compliance Procedures and Procedures for Environmental Protection; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Revision of HHS National Environmental Policy Act Compliance Procedures and Procedures for Environmental Protection

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice of proposed revision of HHS NEPA Procedures.

DATES: Written comments must be received on or before February 10, 1999.

SUMMARY: In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, and other related environmental laws, executive orders, and regulations, the Department of Health and Human Services published procedures in 1980 for conducting environmental reviews, preparing necessary documentation and making program decisions to ensure that environmental protection is an integral part of HHS operations. These procedures have recently been revised and updated. Comments from interested parties are solicited.

FOR FURTHER INFORMATION CONTACT: Dick Green, Office of Facilities Services, Department of Health and Human Services, Hubert H. Humphrey Building, Room 729D, 200 Independence Avenue, SW, Washington, DC, 20201. Telephone (202) 619–1994, FAX (202) 619–2692, E-mail Address: DGREEN@OS.DHHS.GOV.

Dated: December 23, 1998.

John J. Callahan,

Assistant Secretary for Management and Budget.

HHS Chapter 30—General Administration Manual; HHS Transmittal 98.2

PART 30—ENVIRONMENTAL PROTECTION

Contents

Chapter and Title

HHS Chapter 30–00—General Administration Manual; HHS Transmittal 98.2

Subject: Environmental Protection

30–00–00 Purpose

This Chapter summarizes and provides guidance on many current statutory, regulatory and Executive Order environmental authorities. It does not create or confer any rights on any person and it is not intended to be used as the sole source of information for any of the referenced environmental compliance requirements. The Department recognizes that any of the authorities described herein may be revised after the issuance of the Chapter. The current specific environmental statute, regulation or Executive Order should be reviewed when questions arise. To the extent that any statement in this chapter should conflict with a current applicable statutory, regulatory or Executive Order requirement, that statutory, regulatory or Executive Order requirement shall supersede any inconsistent provision of this GAM Chapter. Additional questions should be referred to the OPDIV environmental officer, the Departmental environmental program manager, and/or the Office of the General Counsel.

Part 30 of the General Administration Manual establishes Departmental policy and procedures with respect to protection of the environment and the preservation of natural resources. Under Federal statutes, regulations, and Executive Orders, all Federal Departments and agencies are required to comply with all applicable Federal, State and local environmental statutes, laws and regulations and must take into account the environmental consequences of their activities. In many cases, the activities of non-Federal organizations which operate under the authority or with the support of Federal Departments or agencies are also included.

This Part supersedes Part 30, Environmental Protection, 1980, with the exception that Part 30, Chapter 30–40, Cultural Asset Review (Historical Preservation) remains in effect until a separate revised Chapter dealing with this subject is published.

30–00–10 Chapter Organization and Content

The chapters of Part 30 are organized as follows:

- Chapter 30–00 provides a list and summary descriptions of certain environmental laws and Executive Orders, and a list of definitions.
- Chapter 30–10 and 30–20 provide overall Departmental policy with respect to environmental protection and a summary of internal administrative procedures which Departmental organizations must implement.
- Chapter 30–30 provides a general summary of the environmental review process for Departmental activities under the National Environmental Policy Act and statutes and Executive Orders that require protection and preservation of natural and cultural assets.
- Chapters 30–40 through 30–90 provide detailed requirements for certain environmental statutes and Executive Orders covered by Part 30.

30–00–20 Environmental Statutes and Executive Orders

Federal agencies are potentially subject to more than 150 Federal statutes and Executive Orders governing the environment. Many of these laws are noted in Table 1.

Environmental laws and implementing regulations that significantly impact the Department are summarized in the following subsections. Detailed guidance is contained in other chapters of Part 30 for certain environmental statutes and Executive Orders. Table 1, as follows, indicated the location of statutes or Executive Orders that are discussed in Part 30.

TABLE 1.—STATUTES AND EXECUTIVE ORDERS

Environmental statute or executive order	Citation	Part 30 location
Acid Precipitation Act of 1980	42 U.S.C. §§ 8901 to 8912	
Act to Prevent Pollution From Ships	33 U.S.C. §§ 1901 to 1912	
Agricultural Act of 1970	16 U.S.C. §§ 1501 to 1510	
American Indian Religious Freedom Act	42 U.S.C. § 1996	

TABLE 1.—STATUTES AND EXECUTIVE ORDERS—Continued

Environmental statute or executive order	Citation	Part 30 location
Antarctic Protection Act of 1990	16 U.S.C. §§ 2461 to 2466	
Antiquities Act of 1906	16 U.S.C. §§ 431 to 433	30–00–20K
Archeological and Historic Preservation Act of 1974	16 U.S.C. §§ 469 to 469c–1	30–00–20K
Archeological Resources Protection Act of 1979	16 U.S.C. §§ 470aa to 470mm	
Asbestos Hazard Emergency Response Act of 1986	15 U.S.C. §§ 2641 to 2656	
Atomic Energy Act of 1954	42 U.S.C. §§ 2011 to 2297g–4	
Aviation Safety and Noise Abatement Act of 1979	49 U.S.C. app. §§ 2101 to 2125	
Clean Air Act	42 U.S.C. §§ 7401 to 7671q	30–00–20A
Clean Vessel Act of 1992	33 U.S.C. § 1322 note	
Clean Water Act [Federal Water Pollution Control Act]	33 U.S.C. §§ 1251 to 1387	30–00–20B
Coastal Barrier Resources Act	16 U.S.C. §§ 3501 to 3510	
Coastal Wetlands Planning Protection, and Restoration Act	16 U.S.C. §§ 3951 to 3956	
Coastal Zone Management Act of 1972	16 U.S.C. §§ 1451 to 1464	30–00–20C; Ch. 30–40
Community Environmental Response Facilitation Act	42 U.S.C. §§ 9620 note	
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [“Superfund”].	42 U.S.C. §§ 9601 to 9675	30–00–20D
Emergency Planning and Community Right-to-Know Act of 1986	42 U.S.C. §§ 11001 to 11050	30–00–20E; Ch. 30–60
Emergency Wetlands Resources Act of 1986	16 U.S.C. §§ 3901 to 3932	
Endangered Species Act of 1973	16 U.S.C. §§ 1531 to 1544	30–00–20F; Ch. 30–40
Energy Policy Act of 1992	42 U.S.C. §§ 13201 to 13556	30–00–20G
Energy Policy and Conservation Act	42 U.S.C. §§ 6201 to 6422	
Energy Reorganization Act of 1974	42 U.S.C. §§ 5801 to 5891	
Energy Supply and Environmental Coordination Act of 1974	15 U.S.C. §§ 791 to 798	
Environmental Programs Assistance Act of 1984	42 U.S.C. § 4368a	
Environmental Quality Improvement Act of 1970	42 U.S.C. §§ 4371 to 4375	
Farmland Protection Policy Act	7 U.S.C. §§ 4201 to 4209	
Federal Facility Compliance Act of 1992	42 U.S.C. §§ 6903, 6908, 6924, 6927, 6939c, 6939d, 6961, 6965.	
Federal Food, Drug, and Cosmetic Act	21 U.S.C. §§ 301 to 397	
Federal Insecticide, Fungicide, and Rodenticide Act	7 U.S.C. §§ 136 to 136y	30–00–20H
Federal Land Policy and Management Act of 1976	43 U.S.C. §§ 1701 to 1784	
Federal Oil and Gas Royalty Management Act of 1982	30 U.S.C. §§ 1701 to 1757	
Fish and Wildlife Act of 1956	16 U.S.C. §§ 742a to 742d, 742e to 742j–2.	
Fish and Wildlife Coordination Act	16 U.S.C. §§ 661 to 666c	30–00–20I; Ch. 30–40
Flood Disaster Protection Act of 1973	42 U.S.C. §§ 2414, 4001 to 4129	
Forest and Rangeland Renewable Resources Planning Act of 1974	16 U.S.C. §§ 1600 to 1614	
Forest and Rangeland Renewable Resources Research Act of 1978	16 U.S.C. §§ 1641 to 1649	
Forest Ecosystems and Atmospheric Pollution Research Act of 1988	16 U.S.C. §§ 1642, 1642 note.	
Geothermal Energy Research, Development and Demonstration Act of 1974.	30 U.S.C. §§ 1101 to 1164.	
Global Change Research Act of 1990	15 U.S.C. §§ 2921 to 2961.	
Global Climate Protection Act of 1987	15 U.S.C. § 2901 note.	
Hazardous Substance Response Revenue Act of 1980	26 U.S.C. §§ 4611–4612, 4661–4662.	
Historic Sites Act of 1935 [Historic Sites, Buildings, and Antiquities Act]	16 U.S.C. §§ 461 to 467	30–00–20J
Indian Environmental General Assistance Program Act of 1992	42 U.S.C. § 4368b.	
Lead-Based Paint Exposure Reduction Act	15 U.S.C. §§ 2681 to 2692.	
Lead-Based Paint Poisoning Prevention Act	42 U.S.C. §§ 4821 to 4846.	
Lead Contamination Control Act of 1988	42 U.S.C. §§ 300j–21 to 300j–26.	
Low-Level Radioactive Waste Policy Act	42 U.S.C. §§ 2021b to 2021j.	
Marine Mammal Protection Act of 1972	16 U.S.C. §§ 1361 to 1421h.	
Marine Protection, Research, and Sanctuaries Act of 1972	16 U.S.C. §§ 1431 to 1445a; 33 U.S.C. §§ 1401 to 1445.	30–00–20K; Ch. 30–40
Medical Waste Tracking Act of 1988	42 U.S.C. §§ 6992 to 6992K.	
Migratory Bird Treaty Act	16 U.S.C. §§ 703 to 712.	
Mining and Mineral Resources Research Institute Act of 1984	30 U.S.C. §§ 1221 to 1230a.	
Multiple-Use Sustained-Yield Act of 1960	16 U.S.C. §§ 528 to 531.	
National Climate Program Act	15 U.S.C. §§ 2901 to 2908.	
National Contaminated Sediment Assessment and Management Act	33 U.S.C. § 1271 note.	
National Environmental Policy Act of 1969	42 U.S.C. §§ 4321 to 4370d	30–00–20L; Ch. 30–50
National Forest Management Act of 1976	16 U.S.C. §§ 472a, 521b, 1600, 1611 to 1614.	
National Environmental Education Act	20 U.S.C. §§ 5501 to 5510.	
National Historic Preservation Act	16 U.S.C. §§ 470 to 470x–6	30–00–20J
Native American Graves Protection & Repatriation Act	25 U.S.C. §§ 3001 to 3013	
Noise Control Act of 1972	42 U.S.C. §§ 4901 to 4918	
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990	16 U.S.C. §§ 4701 to 4751	
Nuclear Waste Policy Act of 1982	42 U.S.C. §§ 10101 to 10270	
Occupational Safety and Health Act of 1970	29 U.S.C. §§ 651 to 678	30–00–20M
Ocean Dumping Ban Act of 1988	33 U.S.C. §§ 1412a, 1414a to 1414c	
Oil Pollution Act of 1990	33 U.S.C. §§ 2701 to 2761	
Organotin Antifouling Paint Control Act of 1988	33 U.S.C. §§ 2401 to 2410	

TABLE 1.—STATUTES AND EXECUTIVE ORDERS—Continued

Environmental statute or executive order	Citation	Part 30 location
Outer Continental Shelf Lands Act	43 U.S.C. §§ 1331 to 1356	
Outer Continental Shelf Lands Act Amendments of 1978	43 U.S.C. §§ 1344 to 1356, 1801 to 1866; 30 U.S.C. § 237.	
Pollution Prevention Act of 1990	42 U.S.C. §§ 13101 to 13109	30–00–20N; Ch. 30–70
Pollution Prosecution Act of 1990	42 U.S.C. § 4321 note	
Powerplant and Industrial Fuel Use Act of 1978	42 U.S.C. §§ 8301 to 8483	
Refuse Act of 1899	33 U.S.C. § 407	
Renewable Resources Extension Act of 1978	16 U.S.C. §§ 1671 to 1676	
Residential Lead-Based Paint Hazard Reduction Act of 1992	42 U.S.C. §§ 4851 to 4856	
Resource Conservation and Recovery Act of 1976 [Solid Waste Disposal Act].	42 U.S.C. §§ 6901 to 6991i	30–00–20O
Rivers and Harbors Appropriation Acts (Selected sections)	33 U.S.C. §§ 401 to 426p and 441 to 454.	
Safe Drinking Water Act	42 U.S.C. §§ 300F to 300j–26	30–00–20P; Ch. 30–40
Shore Protection Act of 1988	33 U.S.C. §§ 2601 to 2609, 2621 to 2623.	
Soil and Water Resources Conservation Act of 1977	16 U.S.C. §§ 2001 to 2009	
Surface Mining Control and Reclamation Act of 1977	30 U.S.C. §§ 1201 to 1328.	
Toxic Substances Control Act	15 U.S.C. §§ 2601 to 2692	30–00–20Q
United States Public Vessel Medical Waste Antidumping Act of 1988	33 U.S.C. §§ 2501 to 2504	
Uranium Mill Tailings Radiation Control Act of 1978	42 U.S.C. §§ 7901 to 7942	
Water Resources Research Act of 1984	42 U.S.C. §§ 10301 to 10309	
Wild and Scenic Rivers Act	16 U.S.C. §§ 1271 to 1287	30–00–20R; Ch. 30–40
Wild Bird Conservation Act of 1992	16 U.S.C. §§ 4901 to 4916	
Wild Free-Roaming Horses and Burros Act	16 U.S.C. §§ 1331 to 1340	
Wilderness Act	16 U.S.C. §§ 1131 to 1136	
Wood Residue Utilization Act of 1980	16 U.S.C. §§ 1681 to 1687	
Executive Order 13007, Indian Sacred Sites	61 FR 26771 (1996)	
Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities.	59 FR 11463 (1994)	
Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.	59 FR 7629 (1994)	30–00–20S
Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.	63 FR 49644 (1998)	30–00–20N; Ch. 30–90
Executive Order 12866, Regulatory Planning and Review	58 FR 51735 (1993)	
Executive Order 12856, Federal Compliance With Right-to-Know Law and Pollution Prevention Requirements.	58 FR 41981 (1993)	30–00–20E; Ch. 30–80
Executive Order 12852, President's Council on Sustainable Development	58 FR 35841 (1993), as amended by E.O. 12855, 58 FR 39107 (1993); 42 U.S.C. § 4321 note.	
Executive Order 12845, Requiring Agencies To Purchase Energy-Efficient Computer Equipment.	58 FR 21887 (1993)	
Executive Order 12844, Federal Use of Alternative Fueled Vehicles	58 FR 21885 (1993)	
Executive Order 12843, Procurement Requirements and Policies for Agencies for Ozone-Depleting Substances.	58 FR 21881 (1993)	
Executive Order 12778, Civil Justice Reform	56 FR 55195 (1991); 28 U.S.C. § 519 note.	
Executive Order 12777, Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, As Amended, and the Oil Pollution Act of 1990.	56 FR 54757 (1991); 33 U.S.C. § 1321 note.	
Executive Order 12761, Establishment of President's Environment and Conservation Challenge Awards.	56 FR 23645 (1991); 42 U.S.C. § 4321 note.	
Executive Order 12759, Federal Energy Management	56 FR 16256 (1991); 42 U.S.C. § 6201 note.	
Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.	53 FR 8859 (1988); 5 U.S.C. § 601 note.	
Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation.	54 FR 41685 (1987); 5 U.S.C. § 601 note.	
Executive Order 12580, Superfund Implementation	52 FR 2923 (1987), as amended by E.O. 12777, 56 FR 54757 (1991); 42 U.S.C. §§ 9615 note.	30–00–20D
Executvie Order 12114, Environmental Affects Abroad of Major Federal Actions.	44 FR 1957 (1979); 42 U.S.C. § 4321 note.	30–00–20M; Ch. 30–50
Executive Order 12088, Federal Compliance With Pollution Control Standards.	43 FR 47707 (1978), as amended by E.O. 12580, 52 FR 2923 (1987); 42 U.S.C. § 4321 note.	30–00–20T
Executive Order 11990, Protection of Wetlands	42 FR 26961 (1977), as amended by E.O. 12608, 52 FR 34617 (1987); 42 U.S.C. § 4321 note.	30–00–20L; Ch. 30–40
Executive Order 11988, Floodplain Management	42 FR 26951 (1977), as amended by E.O. 12148, 44 FR 43239 (1979); 42 U.S.C. § 4321 note.	30–00–20L; Ch. 30–40

TABLE 1.—STATUTES AND EXECUTIVE ORDERS—Continued

Environmental statute or executive order	Citation	Part 30 location
Executive Order 11987, Exotic Organisms	42 FR 26949 (1977); 42 U.S.C. §4321 note.	30–00–20L
Executive Order 11912, Delegation of Authorities Relating to Energy Policy and Conservation.	41 FR 15825 (1976), as amended by E.O. 12003, 42 FR 37523 (1977), E.O. 12038, 43 FR 4957 (1978), E.O. 12148, 44 FR 43239 (1979), E.O. 12375, 47 FR 34105 (1982); 42 U.S.C. §6201 note.	
Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans.	38 FR 25161 (1973); 42 U.S.C. §7606 note.	
Executive Order 11644, Use of Off-Road Vehicles on Public Lands	37 FR 2877 (1972), as amended by E.O. 11989, 42 FR 26959 (1977), E.O. 12608, 52 FR 34617 (1987); 42 U.S.C. §4321 note.	
Executive Order 11593, Protection and Enhancement of the Cultural Environment.	36 FR 8921 (1971); 16 U.S.C. §470 note.	30–00–20J
Executive Order 11514, Protection and Enhancement of Environmental Quality.	35 FR 4247 (1970), as amended by E.O. 11991, 42 FR 26967 (1977); 42 U.S.C. §4321 note.	30–00–20L

A. *Clean Air Act (CAA).* The CAA of 1970, 42 U.S.C. §§ 7401–7671q, as amended, establishes five major programs that cover (1) The attainment and maintenance of air quality standards; (2) reduction of hazardous air pollutants; (3) development of emission standards for motor vehicles and fuels; (4) protection of the stratospheric ozone; and (5) reduction of acid rain deposition.

1. *National Ambient Air Quality Standards Program (NAAQS).* All new and existing sources of air pollution are subject to ambient air quality regulation. The Clean Air Act directs the Environmental Protection Agency (EPA) Administrator to identify pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. EPA is also required to publish primary and secondary NAAQS for the identified pollutants. Primary NAAQS are designed to protect public health with an adequate margin of safety, and secondary NAAQS are designed to protect the public welfare. In 40 CFR Part 50, EPA has promulgated NAAQS for six pollutants: sulfur dioxide (SO_2), particulate matter, nitrogen dioxide (NO_2), carbon monoxide, ozone, and lead.

Each State is given primary responsibility for assuring that air quality within its borders is maintained at a level consistent with the NAAQS. The NAAQs's are implemented through source-specific emission limitations established by States in State Implementation Plans (SIPs). SIPs must meet minimum criteria set forth in the Clean Air Act and are reviewed by EPA. A SIP may be enforced by the State or EPA. EPA must promulgate a Federal Implementation Plan (FIP) if a State fails to make a required submission or if a SIP submission is disapproved and the State does not remedy the deficiency within a specified period.

(a) *Nonattainment Areas.* SIPs must adopt, at a minimum, reasonably available control technology (RACT) for existing sources and provide for annual incremental reductions in emissions of nonattainment pollutants. The CAA also contains additional requirements for SIPs in areas that do not attain the NAAQS, including specific requirements for certain pollutants.

(b) *New Source Performance Standards (NSPS).* New sources of pollution are subject to more stringent control technology and permitting requirements than existing sources. EPA is authorized to establish new source performance standards, which impose Federal technology-based requirements on emissions from new or modified major stationary sources of pollution. The Clean Air Act directs EPA to establish standards for new sources that reflect the degree of emission limitation achievable through the application of the best system of emission reduction which the EPA Administrator determines has been adequately demonstrated to be the best. These standards may be promulgated as design, equipment, work practice, or operational standards where numerical emission limitations are not feasible. EPA has developed NSPS standards for a number of industry categories which are published at 40 CFR part 60. Each NSPS identifies the types of facilities to which the standards apply.

(c) *Prevention of Significant Deterioration Program (PSD).* A permit must be obtained under the PSD program before a ''major'' new source may be constructed or ''major modification'' made to an existing major source in an area that attains the NAAQS or is designed unclassifiable. The CAA requires each SIP to ''contain emission limitations and such other measures as may be necessary * * * to prevent significant deterioration of air quality'' in each region of the state in which the air quality exceeds national standards. EPA's PSD regulations are codified at 40 CFR part 51.

(d) *Nonattainment Program.* Regions that have failed to meet the NAAQS for one or more criteria pollutants are designated as ''nonattainment'' areas. New or modified major stationary sources proposed for nonattainment areas are required to comply with stringent permitting requirements, including a showing that the decrease in emissions from existing sources in the area is sufficient to offset the increase in emissions from the new or modified source and achievement of the ''lowest achievable emission rate'' (LAER).

2. *National Emission Standards for Hazardous Air Pollutants (NESHAP).* The 1970 Clean Air Act authorized EPA to establish health-based national emission standards for hazardous air pollutants (NESHAP) to protect the public from these pollutants. EPA has established standards for seven hazardous substances. EPA's NESHAP regulations are published at 40 CFR part 61. The 1990 CAA amendments directed EPA to establish technology-based standards for 189 hazardous substances

based on the use of ''maximum achievable control technology'' (MACT).

3. *Emission Standards for Mobile Sources and Fuel-Related Programs.* EPA is authorized to establish allowable levels of auto emissions and to control fuels and fuel additives. The 1990 CAA amendments establish lower emission standards for automobiles and other vehicles and provide for the use of ''clean'' alternative fuels and ''clean fuel'' vehicles.

4. *Stratospheric Ozone Protection.* Title VI of the Act, added in 1990, addresses scientific concerns related to stratospheric ozone depletion and global warming by providing for the phase-out of ozone-depleting substances. Title VI calls for the phase-out of most ozone-depleting substances by the year 2000 and the imposition of other controls designed to minimize the emissions of such substances prior to their elimination.

5. *Acidic Deposition.* The 1990 CAA amendments added Title IV of the Act which authorizes EPA to establish an acid rain program to reduce the adverse effects of acidic deposition. The program imposes sulphur dioxide (SO_2) and nitrogen oxide (NO_X) controls on existing and new electric utility plants.

6. *Permits.* The 1990 CAA amendments added Title V which establishes an operating permit program for existing stationary sources. The permit program is modeled on the Clean Water Act permit program (NPDES program—see 30–00–20B). Each State must develop and implement a Clean Air Act operating permit program. EPA is required to issue permit program regulations that are to be followed by the States in establishing their programs; approve each State's permit program; and establish a Federal permit program if a State fails to implement an approved program. EPA is also authorized to review each permit issued by a State. EPA regulations addressing the minimum requirements for State operating permit programs are contained in 40 CFR part 70.

7. *Civil and Criminal Penalties.* EPA is authorized to seek compliance with the Act's provisions through administrative, civil, and criminal enforcement sanctions. The maximum penalties that may be imposed for violation of the CAA are contained in Table 2.

Violation	Administrative penalty	Civil penalty	Criminal penalty
Violation of CAA requirement	$25,000 per day (maximum $200,000 may be waived by EPA and DOJ jointly). Alternative: recovery of projected economic value of noncompliance.	$25,000 per violation	Up to $250,000 per day and/or up to 5 yrs. imprisonment. Corporations subject to $500,000 per violation. Penalty doubled after first offense.
''Field citation'' for minor violations	$5,000 per day		
False statement or failure to file or maintain records or reports.	.....	.....	Up to $250,000 and/or up to 2 yrs. imprisonment; $500,000 for corporation. Penalty doubled after first offense.
Knowing failure to pay fee	.....	.....	Up to $250,000 and/or up to 1 yr. imprisonment; $1 million per day for corporations. Penalty doubled after first offense.
Knowing release of HAP or ''extremely hazardous substance'' placing another in ''imminent danger of death or serious bodily injury''.	.....	.....	Up to $25,000 per day and/or up to 15 yrs. imprisonment; $1 million per day for corporations. Penalty doubled after first offense.
Negligent release of air toxic placing another in ''imminent danger of death or serious bodily injury''.	.....	.....	Up to $100,000 and/or up to 1 yr. imprisonment; corporations subject to $200,000. Penalty doubled after first offense.

B. *Clean Water Act (CWA).* The Clean Water Act, 33 U.S.C. 1251–1387, was originally enacted as the Federal Water Pollution Control Act of 1972. The Act was substantially amended in 1977 and became the Clean Water Act. The objective of the CWA is to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' The Act establishes as a national policy ''that the discharge of toxic pollutants in toxic amounts be prohibited.'' Among the goals established by the Act are achievement of a level of water quality which ''provides for the protection and propagation of fish, shellfish and wildlife * * * [and] * * * for recreation in and on the water'' and elimination of the discharge of pollutants into navigable waters.

1. *Water Quality Standards.* A water quality standard defines the water quality goals of a water body by designating the uses to be made of the water and by setting criteria necessary to protect the uses. States are responsible for establishing water quality standards. The standards are designed to protect public health or welfare, enhance the quality of water, and serve the other purposes of the Clean Water Act. States are required to review their water quality standards at least once every three years. EPA reviews and approves or disapproves State-adopted water quality standards in accordance with regulations codified at 40 CFR part 131.

(a) *Water Uses.* Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State, must take into consideration the use and value of waters for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) *Water Quality Criteria.* States must adopt those water quality criteria that protect the designated uses. Criteria are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use.

(c) *Toxic Pollutants.* The Water Quality Act of 1987 amended the CWA

to require States to identify those waters that are adversely affected by toxic, conventional, and nonconventional pollutants; to identify where additional controls are needed; and to prepare individual control strategies. States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use, or where the levels of toxic pollutants are at a level to warrant concern, and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.

2. *Effluent Limitations.* The CWA directs EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial discharges. The EPA implementing regulations are based principally on the degree of effluent reduction attainable through the application of control technologies. To ensure that effluent guidelines remain current with the state of the industry and with available control technologies, EPA is required to revise the effluent guidelines at least annually if appropriate.

(a) *Direct Dischargers.* The effluent guidelines promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants.

(i) *Best Practicable Control Technology (BPT).* The CWA directs the achievement of effluent limitations requiring applications of Best Practicable Control Technology (BPT). In general, effluent limitations that are based on Best Practicable Control Technology (BPT) represent the average of the best treatment performance for an industrial category.

(ii) *Conventional Pollutants—Best Conventional Pollutant Control Practical Technology (BCT).* For conventional pollutants listed in the Act, the CWA directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT).

(iii) *Toxic Pollutants—Best Available Technology (BAT).* For the toxic pollutants listed in the CWA and for nonconventional pollutants, the Act directs the achievement of effluent limitations requiring application of Best Available Technology Economically Achievable (BAT). Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

(iv) *New Source Performance Standards (NSPS).* In addition to limitations for existing direct dischargers, EPA has established New Source Performance Standards (NSPS) for new direct dischargers. NSPS limitations must be as stringent, or more stringent, than BAT limitations for existing sources within the industry category or subcategory.

(v) *National Pollutant Discharge Elimination (NPDES) Permit.* The limitations and standards for direct dischargers are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES).

(b) *Indirect Dischargers*

(I) *Conventional Pollutants.* In general, EPA does not develop regulations to control conventional pollutants discharged by indirect dischargers because the publicly-owned treatment works (POTWs) receiving those wastes normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

(ii) *Pretreatment Standards.* Indirect dischargers are regulated by the general pretreatment regulations (40 CFR Part 403), local discharge limits developed pursuant to Part 403, and categorical pretreatment standards for new and existing sources covering specific industrial categories. These categorical standards apply to the discharge of pollutants from non-domestic sources which interfere with or pass through POTWs, and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

3. *National Pollutant Discharge Elimination System (NPDES) Permit.*

(a) *Requirement.* The CWA states that a permit is required for the discharge of pollutants from a point source into waters of the United States. Under the NPDES, permits are required whenever a pollutant is: (1) discharged (2) by a person (3) from a point source (4) into navigable waters of the United States.

(b) *Waters of the United States.* The Clean Water Act applies to ''navigable water'', which are in turn defined as ''waters of the United States, including the territorial seas.'' (33 U.S.C. 1362(7)). Navigable waters are broadly defined and are not limited to ''navigability in fact''. Waters of the United States include interstate waters and wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent steams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce; all impoundments of waters; tributaries; the territorial seas; and wetlands adjacent to other waters of the United States. (33 CFR 328.3(a)).

(c) *Storm Water Discharges.* Section 402(p) of the CWA clarifies that storm water discharges associated with industrial activity, including construction activity, to waters of the United States must be authorized by a NPDES permit. The CWA requires EPA to issue regulations establishing general permit standards for industrial storm water dischargers. Facility operators have to file notices of intent to be covered by the general permit and are required to develop pollution prevention plans to keep contaminants out of storm water. The general permits also establish special requirements for facilities that are subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313 reporting (see Chapters 30–60 and 30–80). The regulations are codified at 40 CFR 122.26.

(d) *Recordkeeping and Monitoring.* The NPDES permits require holders to keep updated records and to install and maintain monitoring equipment, to take samples of effluents, and to report their findings to the EPA. The results must be in the form of a discharge monitoring report, which is a uniform method devised by the EPA for the self-monitoring of permitted facilities.

4. *Spills of Oil and Hazardous Substances.* Under section 311, spills of listed hazardous substances in ''Reportable Quantities'' established by regulation must be reported to the National Response Center and promptly cleaned up. See 40 CFR parts 116–117 for designations of hazardous substances and reportable quantities. Spill Prevention Control and Countermeasure (SPCC) Plans must be adopted so as to prevent discharge of oil from onshore and offshore facilities into the navigable waters or adjoining shores. Requirements are set forth at 40 CFR part 112.

5. *Civil and Criminal Penalties.* Administrative, civil, or criminal penalties may be imposed by EPA or a federal court for violation of the Act.

C. *Coastal Zone and Management Act (CZMA).* The Coastal Zone Management Act, 16 U.S.C. 1451 to 1464, requires that Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. Procedures for consistency determinations under the CZMA requirements are codified at

15 CFR part 930 and are described in Chapter 30–40.

D. *Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA).* The Comprehensive Environmental, Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 to 9675, is popularly known as the ''Superfund'' Act. The statute provides for a fund to address the problems of ''cleaning up'' abandoned or leaking hazardous waste sites. The 1980 statute was substantially revised in 1986 by the Superfund Amendments and Reauthorization Act of 1986 (SARA). It is implemented for federal agencies by Executive Order 12580.

CERCLA authorizes the Environmental Protection Agency (EPA) to:

- Utilize the Hazardous Substance Superfund (''Superfund'') to study and clean up sites that are listed on the National Priorities List (NPL);
- To recover costs expended from parties responsible; and,
- To order such parties to perform work.

1. *Hazardous Substance Superfund.* The Hazardous Substance Superfund is established through the imposition of taxes on certain industries and from general tax revenues. The Superfund is used to pay EPA's clean-up and enforcement costs, natural resource damage, and claims of private parties. Federal agencies are not eligible for funds from the Superfund.

2. *National Contingency Plan (NCP).* The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. The NCP is required by CERCLA section 105 and section 311(c)(2) of the CWA. In Executive Order 12580, 52 FR 2923 (1987), the President delegated to EPA the responsibility for the amendment of the NCP.

National Priorities List (NPL). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (NPL) constitutes this list. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency (EPA) in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list which is Appendix B of 40 CFR part 300, is the National Priorities List (''NPL'').

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites being addressed by other Federal agencies (the ''Federal Facilities Section'').

Federal Facilities. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. The HRS is a screening tool used by the EPA to evaluate risks associated with abandoned or uncontrolled or hazardous waste sites. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

3. *Response and Remediation.* Sections 106 and 107 provide the primary authority for EPA, States, and private parties to recover the costs of cleanup or to abate an endangerment to public health, welfare, or the environment. Section 106 authorizes EPA to seek judicial relief requiring a responsible party to abate an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility. Section 107 imposes liability for cleanup and other response costs [costs incurred in responding to a release or a threatened release of a hazardous substance] upon (1) a ''responsible party'' for the (2) release or ''threatened release'' of (3) a hazardous substance from (4) a facility or vessel.

(a) *Potentially Responsible Party.* Section 107(a) of CERCLA, 42 U.S.C. 9607(a), sets forth four categories of parties that are potentially subject to liability:

(1) *Current owner or operator:* owner or operator of a facility from which there is a release of a hazardous substance, or is the operator or owner when cleanup is performed or litigation initiated;

(2) *fomer owner or operator:* a person who operated or owned a facility when the hazardous substance was disposed of at the facility;

(3) *arranger:* any person who ''arranged for disposal or treatment'' at a facility; and

(4) *transporter:* a person who accepted hazardous substances for transport to a disposal or treatment facility or site that was selected by the transporter ''from which there is a release or threatened release.'' (107(a)(4)).

Note: A current owner or operator may be liable even if it did not handle, dispose of, or treat hazardous wastes at the facility, and without regard to whether hazardous substances were disposed of at the facility during the period of ownership or operation.

(b) *Release or ''Substantial Threat of Release.''* The term ''release'' is defined broadly in the Act. A ''release'' includes ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment * * *'' The release of any quantity of a hazardous substance qualifies as a release under CERCLA. Certain types of releases are excluded from the definition: engine exhaust, nuclear material and fertilizer application. 42 U.S.C. 9601(22).

(c) *Hazardous Substance.* ''Hazardous substances'' are defined in CERCLA section 101(14). A list of these substances can be found at 40 CFR part 302. The definition of ''hazardous substances'' incorporates lists of hazardous pollutants that have been developed under other Federal environmental statues and wastes that exhibit characteristics of a hazardous waste under the Resource Conservation and Recovery Act (''RCRA''). Table 3, following, outlines hazardous pollutants considered to be hazardous substances under CERCLA.

Type of pollutant	Statutory definition
Hazardous Air Pollutants.	CAA, Section 112
Hazardous Substances.	CWA, Section 311
Toxic Pollutants	CWA, Section 307
Substances which ''may present substantial danger to public health or welfare or the environment''.	CERCLA, Section 102
Listed Hazardous Wastes; Characteristic hazardous wastes.	RCRA, Section 3001

Type of pollutant	Statutory definition
Imminently Hazardous Chemical Substances or Mixtures.	TSCA, Section 7

(1) *Petroleum Exclusion.* Petroleum, ''including crude oil or any fraction thereof,'' is excluded from the definition of ''hazardous substance.''

(2) *Pollutants or Contaminants.* EPA may clean up a site polluted by either a ''hazardous substance'' or a ''pollutant or contaminant,'' but CERCLA does not authorize EPA to recover its cleanup costs from private parties or to issue an order directing the parties to perform a cleanup when the substance involved is only a ''pollutant or contaminant.''

(d) *Response Costs.* CERCLA permits the recovery of ''response costs'', which includes the costs of removal, remedial action, and enforcement activities related thereto. In addition to liability for costs and damages related to response actions stemming from a release of a hazardous substance, liability may also be imposed for costs associated with the loss of a contaminated area's natural resources.

(e) *Application of Liability.* The statute does not set forth liability standards. The courts have consistently applied the following standards.

(1) *Strict liability;*

(2) *Joint and Several Liability;* and

(3) *Retroactive Liability.*

(f) *Defense to Liability.* The statute permits liability to be defended when the release was caused by:

(1) an act of God;

(2) an act of war; or

(3) the act or omission of a third party other than an employee or agent or one in a contractual relationship with the party being sought to be held liable.

4. *Penalties.* A party that refuses or fails to comply with a Section 106 order from EPA may be assessed up to $25,000 per day of the violation of the order. Additional penalties may also be imposed.

5. *Executive Order 12580.* Executive Order 12580, Superfund Implementation, 52 FR 2923 (1987), as amended by Executive Order 12777, 56 FR 54757 (1991), 42 U.S.C. 9615 note, implements CERCLA by delegating functions under the Act vested in the President to Federal agencies.

E. *Emergency Planning and Community Right-To-Know (EPCRA)*

1. *EPCRA.* The Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050, establishes a mechanism for providing the public with important information on the hazardous and toxic chemicals in their communities, and it creates emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances. The Act requires owners and operators of certain facilities to annually submit toxic chemical release inventories to EPA, affected States, and Indian tribes. EPCRA requirements are set forth in chapter 30–60. Because it was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), the statue is sometimes referred to as ''SARA, Title III''.

2. *Executive Order 12856.* Executive Order 12856, Federal Compliance With Right-to-Know Law and Pollution Prevention Requirements, 58 FR 41981 (1993), applies the requirements of EPCRA to Federal agencies. The requirements of the Order are described in chapter 30–80.

F. *Endangered Species Act (ESA).* The Endangered Species Act, 16 U.S.C. 1531–1543, directs Federal agencies to conserve endangered and threatened species and their critical habitats. Federal agencies must insure, in consultation with the Secretary of the Interior or the Secretary of Commerce, that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of critical habitat unless the agency has been granted an exemption under ESA. Environmental review requirements under ESA are covered in chapter 30–40.

G. Energy Conservation

1. *Energy Policy Act.* The Energy Policy Act of 1992, 42 U.S.C. 13201 to 13556, requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficient and renewable energy technologies.

2. *Energy Policy and Conservation Act.* The Energy Policy and Conservation Act, 42 U.S.C. 6201–6422, authorizes the Secretary of Energy to promote energy efficiency and encourage conservation.

3. *Executive Order 12902.* Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, 59 FR 11463 (1994), requires each federal agency to develop and implement a program with the intent of reducing energy consumption by 30 percent by the year 2005. Each agency must develop and implement a program for its industrial facilities with the intent of increasing energy efficiency by at least 20 percent by the year 2005 and shall implement all cost-effective water conservation projects.

The Order directs each agency responsible for managing Federal facilities to develop and begin implementing a 10-year plan to conduct or obtain comprehensive facility audits, based on prioritization surveys on each of the facilities the agency manages. All agencies are to develop and implement programs to reduce the use of petroleum in their buildings and facilities by switching to a less-polluting and nonpetroleum-based energy source, such as natural gas or solar and other renewable energy sources. The head of each agency shall report annually to the Secretary of Energy and OMB in achieving the goals of this order. Each agency head shall designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of Executive Order 12902. The agency senior official must coordinate implementation of the Order with the Federal Environmental Executive and Agency Environmental Executives established under Executive Order No. 12873 (see chapter 30–90).

H. *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).* The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 to 136y, requires the registration of a pesticide before it may be sold and authorizes the EPA Administrator to limit the distribution, sale or use of unregistered pesticides. EPA is prohibited from registering a pesticide that will clause ''unreasonable adverse effects on the environment.'' Regulations implementing FIFRA govern the use, storage, and disposal of registered pesticides. Additionally, these regulations govern the requirements for training and certification of applicators, container labeling, and worker protection.

1. *Fish and Wildlife Coordination Act.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, requires Federal agencies to protect fish and wildlife resources which may be affected by an agency plan to control or modify a natural stream or body of water for any purpose. The agency also must provide for the development and improvement of wildlife resources that will be affected by its action. Before taking action, the agency must consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the State agency exercising administration over the wildlife resources that will be affected to determine means and measures that should be adopted to prevent the loss of or damage to such wildlife resources, as well as to provide concurrently for the

development and improvement of such resources. Consultation requirements under the Fish and Wildlife Coordination Act are described in chapter 30–40.

J. Historic Preservation

1. *Antiquities Act of 1906.* The Antiquities Act of 1906, 16 U.S.C. 431–433, authorizes the President to declare historic landmarks, historic and pre-historic structures, and other objects of historic and scientific interest that are located on Federal lands to be national monuments.

2. *Archeological and Historic Preservation Act of 1974.* The Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 to 469c–1, directs Federal agencies to preserve significant scientific, prehistorical, historical and archaeological data.

3. *Historic Sites Act of 1935.* The Historic Sites Act of 1935, 16 U.S.C. 461 to 467, states that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the public. The Act is also popularly called ''The Historic Sites, Buildings, and Antiquities Act.''

4. *National Historic Preservation Act.* The National Historic Preservation Act, 16 U.S.C. 470 to 470x–6, directs heads of Federal agencies to assume responsibility for the preservation of historic properties which are owned or controlled by such agencies.

5. *Executive Order 11593.* Executive Order 11593, Protection and Enhancement of the Cultural Environment, 36 FR 8921 (1971), 16 U.S.C. 470 note, requires Federal agencies to initiate measures and procedures to provide for the maintenance, through preservation, rehabilitation, or restoration of Federally-owned sites that are listed on the National Register of Historic Places.

K. *Marine Protection, Research and Sanctuaries Act.* The Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 to 1445a, 33 U.S.C. 1401 to 1445, provides for establishment of marine sanctuaries and directs Federal agencies to ensure that their actions are consistent with the intended use of such areas.

L. *National Environmental Policy (NEPA).*

1. *NEPA.* The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4306d, establishes a comprehensive policy for protection and enhancement of the environment by the Federal government; creates the Council on Environmental Quality; and directs Federal agencies to carry out the policies and procedures of the act. NEPA is covered in chapter 30–50.

2. *Executive Order 12114.* Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), enables responsible officials of Federal agencies having ultimate responsibility for authorizing and approving certain Federal activities significantly affecting the environment of the global commons, or a foreign nation, or certain major Federal actions outside the United States which significantly affect natural or ecological resources of global importance, to be informed of pertinent environmental considerations and to take such considerations into account in making decisions regarding such actions. Executive Order 12114 is implemented for HHS in chapter 30–50.

3. *Executive Order 11990.* Executive Order 11990, Protection of Wetlands, 42 FR 26961 (1977), as amended by Executive Order 12608, 52 FR 34617 (1987) 42 U.S.C. 4321 note, directs Federal agencies to avoid, to the extent possible, the long and short term adverse impacts associated with the destruction or modification of wetlands and direct or indirect support of new construction in wetlands wherever there is a practical alternative. Executive Order 11990 is covered in chapter 30–40.

4. *Executive Order 11988.* Executive Order 11988, Floodplain Management, 42 FR 26951 (1977), as amended by Executive Order 12148, 44 FR 43239 (1979), 42 U.S.C. 4321 note, directs Federal agencies to take action to avoid, to the extent possible, the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development whenever there is a practical alternative. Executive Order 11988 is implemented for HHS in chapter 30–40.

5. *Executiver Order 11514.* Executive Order 11514, Protection and Enhancement of Environmental Quality, 35 FR 4247 (1970), as amended by Executive Order 11991, 42 FR 26967 (1977), 42 U.S.C. note, requires Federal agencies to initiate measures needed to direct their policies, plans, and programs to meet national environmental goals. Federal agencies must develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. In carrying out their responsibilities under NEPA and Executive Order 11514, Federal agencies are to comply with regulations issued by the Council on Environmental Quality, except where compliance would be inconsistent with statutory requirements.

M. *Occupational Safety and Health Act (OSHA).* The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 to 658, regulates the use, storage, and handling of hazardous materials in the workplace and provides for the Department of Labor to establish standards governing workplace safety and health requirements.

N. Pollution Prevention and Recycling

1. *Pollution Prevention Act (PPA).* The Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109, requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. The PPA establishes national policy that pollution is to be prevented or reduced at the source, and the Act requires the Environmental Protection Agency (EPA) to submit biennial reports to Congress that analyze the source reduction and recycling date submitted to it and provide other pollution prevention information that has been gathered from private businesses and Federal agencies. The Act also requires the Administrator of EPA to develop a strategy to promote source reduction; to make matching grants to States to promote the use of source reduction techniques by businesses; and to establish a Source Reduction Clearinghouse. The requirements of the PPA are described in more detail in chapter 30–70.

2. *Executiver Order 13101.* Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, Sep 1998, requires Federal agencies to strive to increase the procurement of productions that are environmentally preferable or that are made wit recovered materials and to set annual goals to maximize the number of recycled products purchased, relative to non-recycled alternatives. Each agency is to establish goals for solid waste prevention and for recycling to be achieved by the years 2000, 2005 and 2010 and to annually report progress in attaining the goals. Executive Order 13101 is implemented for HHS in chapter 30–90.

O. *Resource Conservation and Recovery Act (RCRA)* The Resource Conservation ad Recovery Act of 1976, 42 U.S.C. 6901 to 6991i, governs the generation, storage, and disposal of hazardous waste, and amends the Solid Waste Disposal Act.

P. *Safe Drinking Water Act (SDWA).* The Safe Drinking Water Act, 42 U.S.C. 300f to 33j–26, is intended to protect drinking water sources. The statute

authorizes EPA to determine if an action which will have an environmental effect on a sole or principal drinking water source would also constitute a significant hazard to a human population and, if so, to prohibit such an action.

Q. *Toxic Substances Control Act (TSCA).* The Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. 2601 to 2692, provides controls over the manufacture process, use, distribution and disposal of certain toxic materials e.g., polychlorinated biphenyls, lead-based paint, asbestos containing materials and radon.

R. *Wild and Scenic Rivers Act.* The Wild and Scenic Rivers Act, 16 U.S.C. 1271 to 1287, directs Federal agencies to consider and preserve the values of wild and scenic areas in the use and development of water and land resources.

S. Executive Orders

1. *Executive Order 12898.* Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (1994), requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Each Federal agency must develop an agency-wide environmental justice strategy that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

The environmental justice strategy must list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (a) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (b) ensure greater public participation; (c) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (b) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy must include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

2. *Executive Order 12088.* Executive Order 12088, Federal Compliance with Pollution Control Standards, 43 FR 47707 (1978), as amended by Executive Order 12580, 52 FR 2923 (1987), 42 U.S.C. 4321 note, makes the head of each Federal agency responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

3. *Executive Order 11987.* Executive Order 11987, Exotic Organisms, 42 FR 26949, 42 U.S.C. 4321 note, directs Federal agencies, to the extent permitted by law, to restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or administer.

30–00–30 Definitions

The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this chapter and are not necessarily applicable to any statutory or regulatory requirements. To the extent that a definition of one of these terms should conflict with a definition in an applicable statute, regulation or Executive Order, that statute, regulation or Executive Order definition shall supersede the GAM definition.

A. *Action*—a signed decision by a responsible Department official resulting in:

1. Approval, award, modification, cancellation, termination, use or commitment of Federal funds or property by means of a grant, contract, purchase, loan, guarantee, deed, lease, license or by any other means;

2. Approval, amendment or revocation of any official policy, procedures or regulations including the establishment or elimination of a Department program; or

3. Submission to Congress of proposed legislation which, if enacted, the Department would administer.

B. *Asset*—an entity, group of entities or specific environment as defined in the individual related acts and which the individual related acts seek to protect or preserve. Assets include cultural assets (e.g., historic properties) and natural assets (e.g., wild and scenic rivers, and endangered species).

C. *Environmental Acts*—all authorities listed in Section 30–00–20 or authorities that might be designated under other statutes or Executive Orders.

D. *Environmental Assessment*—a concise public document, as defined in the regulations implementing NEPA, that serves to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement of a finding of no significant impact.

E. *Environmental Effects*—effects, as defined under NEPA, include direct effects, which are caused by the action and occur at the same time and place and indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

F. *Environmental Impact Statement*—a detailed written statement, as required under NEPA, on: (i) the environmental impact of the proposed action, ii) any adverse environmental effects which cannot be avoided if the action is implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

G. *Environmental Review*—the process, including necessary documentation, which a Departmental organization uses to determine whether a proposed action will cause an environmental effect.

H. *Finding of No Significant Impact*—a document by a federal agency, as required under NEPA, briefly presenting the reasons why an action will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

I. *Major Federal Action*—includes actions, as defined by NEPA, with effects that may be major and which are potentially subject to federal control and responsibility.

J. *OPDIV*—HHS Operating Division. The following is a current listing (which may change at some future date) of OPDIVs: Administration on Aging (AoA), Administration for Children and Families (ACF), Agency for Health Care Policy and Research (AHCPR), Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR), Food and Drug Administration (FDA), Health Care Financing Administration (HCFA), Health Resources and Services Administration (HRSA), Indian Health Service (IHS), National Institutes of Health (NIH), Office of the Secretary (OS), Program Support Center (PSC), and Substance Abuse and Mental Health Services Administration (SAMHSA),

K. *STAFFDIV*—HHS Staff Division. The following is a current listing (which

may change at some future date) of STAFFDIVs: Office of the Assistant Secretary for Legislation (ASL), Office of the Assistant Secretary for Management and Budget (ASMB), Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of the Assistant Secretary for Public Affairs (ASPA), Departmental Appeals Board (DAB), Office for Civil Rights (OCR), Office of General Counsel (OGC), Office of Inspector General (OIG), and Office of Public Health and Sciences (OPHS).

L. *Program Review*—a review by OPDIVs/STAFFDIVs of all their actions to determine:

1. Those categories of actions which normally do not individually or cumulatively cause significant environmental effects and therefore may be categorically excluded from further environmental review; and

2. Those categories of actions which require an environmental review because they may cause significant environmental effects under NEPA; and

3. Those categories of actions which require an environmental review because they normally do cause significant environmental effects under NEPA.

HHS Chapter 30–10—General Administration Manual; HHS Transmittal 98.2

Subject: Department of Health and Human Services Environmental Policy

30–10–00	Policy Statement
10	Vision Statement
20	Goal and Objectives
30	Strategy

30–10–00 Policy Statement

The Department of Health and Human Services is committed to complying with all applicable Federal, state and local environmental laws, statutes and regulations, protecting the environment, and conserving our environmental resources by being proactive and cost effective in our environmental stewardship. It is HHS policy that pollution be prevented or reduced at the source. All HHS organizations shall give first priority to avoiding or reducing the generation of hazardous substances, pollutants, and contaminants at the source. Pollution that cannot be prevented or recycled must be treated in an environmentally safe manner to reduce volume, toxicity, and/or mobility. Only as a last resort should disposal or other release into the environment be employed, and such disposal or release must be conducted in accordance with all applicable authorities and in an environmentally safe manner. Managers and employees are expected to execute their responsibilities in a way that is proactive and cost effective in the protection and conservation of our environmental resources and in a manner that complies with all applicable Federal, state, and local environmental laws, statutes and regulations.

30–10–10 Vision Statement

All HHS managers and employees are guardians of the environment when carrying out their responsibilities. Proactive efforts at all organizational levels must be focused on managing environmental risks to ensure that the environment is always protected and our environmental resources are conserved.

OPDIVs/STAFFDIVs must give weight to preservation of the environment and protection of historic or cultural assets in reaching substantive program decisions. All HHS organizations shall assess environmental costs and benefits as well as program goals and objectives in determining a particular course of action. In conducting this assessment, OPDIVs/STAFFDIVs should devote reasonable time, effort, and resources to consideration of enviormental risks associated with a program-related course of action.

30–10–20 Goal and Objectives

The goal of our environmental efforts is to prevent harm to the environment, and enhance the quality of human health by conserving our environmental resources.

This goal is satisfied by meeting the following objectives:

1. Compliance—To comply with all applicable Federal, State, and local environmental laws, statutes and regulations;

2. Conservation—To protect and conserve our environmental resources through pollution prevention, waste reduction and recycling;

3. Pollution Prevention—To protect and conserve our environmental resources through source reduction in facility management and acquisition, where practicable, as the primary means of achieving and maintaining compliance with applicable Federal, State and local environmental laws, statutes and regulations; and

4. Restoration—To restore, when possible, facilities, land, and waters damaged through past practices.

30–10–30 Strategy

HHS has adopted and will adhere to a Code of Environmental Management Principles (CEMP) to help achieve the goals of the HHS environmental protection program. As part of the effort to implement these principles throughout HHS, all OPDIVS/STAFFDIVS will integrate the following principles into their environmental protection programs:

1. *Management Commitment*—Written top management commitment to improve environmental performance by establishing policies which emphasize pollution prevention and the need to ensure compliance with environmental requirements.

2. *Compliance Assurance and Pollution Prevention*—Proactive programs that aggressively identify and address potential compliance problem areas and utilize pollution prevention approaches to correct deficiencies and improve environmental performance.

3. *Enabling Systems*—Necessary systems to enable personnel to perform their functions consistent with regulatory requirements, HHS environmental policies, and the HHS overall mission.

4. *Performance and Accountability*—Measures to address employee environmental performance and ensure full accountability of environmental functions.

5. *Measurement and Improvement*—A program to assess progress toward meeting organization environmental goals, and which uses the results of that assessment to improve environmental performance.

HHS Chapter 30–20—General Administration Manual; HHS Transmittal 98.2

Subject: Administrative Requirements

30–20–00	Background
10	Responsibilities
20	Approval Authority and Delegations of Authority
30	Process for Establishing Categorical Exclusions
40	Categories of Exclusion
50	Environmental Review Procedures

30–20–00 Background

This chapter establishes an administrative framework in the Department for environmentally-related activities. Specifically, this chapter (1) describes the assignment of relative responsibilities in the Department regarding environmental activities; (2) establishes procedures for program reviews; and (3) establishes other ongoing administrative requirements.

30–20–10 Responsibilities

A. *Office of the Secretary.* The Secretary shall designate an official as the Department Environmental Officer, who will be responsible for:

1. Preparing Departmental guidelines and other policy documents for issuance

by the Secretary or other appropriate Department official pertaining to environmental protection and preservation of natural or cultural assets;

2. Approving lead agency agreements having Department-wide applicability;

3. Providing training to HHS program officials with respect to carrying out the requirements of environmental statutes and Executive Orders;

4. Maintaining liaison with the Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and other Federal agencies charged with direct responsibility for administering environmental statutes and Executive Orders;

5. Coordinating the review of environmental statements originating from outside of HHS. This responsibility is delegated to the Centers for Disease Control and Prevention, National Center for Environmental Health (FR, Vol. 43 no. 164, Aug. 23, 1978); and

6. Reviewing and making recommendations to the Assistant Secretary for Management and Budget with respect to determinations by OPDIVs/STAFFDIVs that certain activities are categorically excluded from environmental review.

B. *OPDIVs/STAFFDIVs.* Heads of OPDIVs/STAFFDIVs are responsible for ensuring that organizational units under their authority comply with all provisions of all applicable Federal, State, and local environmental laws, statues, regulations and Executive Orders and with the procedures of part 30. An OPDIV/STAFFDIV head may designate an environmental officer, who may act in either a full-time capacity or in addition to other duties, to assist in fulfilling these responsibilities.

C. *Regional Offices.* Regional Directors are responsible for complying with all provisions of all applicable Federal, State, and local environmental laws, statutes, regulations and Executive Orders and the policies in part 30 for those specific program responsibilities delegated to them. In addition, the Regional Director shall:

1. Serve as principal HHS regional liaison official with other Federal, State, and local agencies on matters pertaining to environmental preservation or protecting environmental, cultural, or natural assets;

2. Coordinate the timely review by regional program personnel of environmental impact statements forwarded to HHS by other agencies; and

3. Periodically verify that their regional program staff are aware of and are complying with the requirements of part 30.

30–20–20 Approval Authority and Delegations of Authority

A. *Delegation of Authority.* The OPDIV/STAFFDIV head and Regional Director may redelegate all of their environmental responsibilities to subordinate program managers except for the authority of an OPDIV/STAFFDIV head to approve the designation of actions as categorically excluded. OPDIV/STAFFDIV heads shall obtain concurrence from the Assistant Secretary for Management and Budget with respect to activities designated to be categorically excluded from environmental reviews.

B. *Excluded Material.* The exclusion of material from environmental impact statements on the basis of national security and trade secrets requires approval by the HHS General Counsel. (See Section 30–30–40.)

C. *Natural Assets.* Proposed actions which will have an effect on certain natural assets may require concurrence or approval from other Federal agencies and/or entities prior to taking the action. (See chapter 30–40.)

D. *Floodplains/Wetlands.* OPDIV/STAFFDIV heads shall sign determinations pursuant to Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, except:

1. The Secretary shall approve proposed actions requiring environmental impact statements on projects affecting floodplains; and

2. The Secretary shall approve proposed actions requiring environmental assessments or environmental impact statements for new construction in wetlands.

30–20–30 Program Reviews

A. *Actions Requiring Environmental Review.* All HHS activities will be evaluated to determine whether such activities are actions that require environmental review.

In a program review, an OPDIV/STAFFDIV evaluates actions it will be taking in order to determine the potential of these actions to cause an environmental effect under an applicable environmental statute or Executive Order. OPDIVs/STAFFDIVs should have already completed an initial review. OPDIVs/STAFFDIVs may undertake additional program reviews subsequently whenever they deem it appropriate.

As a result of program review, an OPDIV/STAFFDIV shall divide each of its actions in one of three groups:

Group 1 (categorically excluded)—Those actions which do not individually or cumulatively have a significant effect on the human environment or affect a natural or cultural asset protected by an environmental statute or Executive Order

Group 2—Those actions which require an environmental review because they may cause a significant environmental effect under NEPA or may affect a protected cultural or natural asset protected by an environmental statute or Executive Order.

Group 3—Those actions which normally do cause a significant environmental effect under NEPA or affect a cultural or natural asset protected by an environmental statute or Executive Order.

In grouping each of its actions, OPDIVs/STAFFDIVs shall use the exclusion categories described in Section 30–20–40. If an action falls within one of these exclusion categories, then it may be included in Group 1. Such actions do not require environmental reviews, except in circumstances described in 30–20–40. If an action does not fall within one of these exclusion categories, then an OPDIV/STAFFDIV must perform an environmental review prior to taking the action. Chapters 30–30 and 30–50 describe the procedures for conducting an environmental review.

Each OPDIV/STAFFDIV shall maintain as part of its organizational guidance documents lists of those actions which it has determined fall under Groups 1, 2, and 3 or shall have regulations that address such actions. These lists shall supplement other internal directives or instructions relating to environment-related responsibilities.

B. *Approval.* A determination by an OPDIV/STAFFDIV that an action falls within Group 1 (Categorically Excluded) is effective upon approval by the OPDIV/STAFFDIV head or, as required, after the issuance of a regulation. However, OPDIVs/STAFFDIVs must forward these determinations to the Assistant Secretary for Management and Budget for concurrence. Determination that an action falls within Group 1 (Categorically Excluded) is effective until rendered inapplicable because of changes in the underlying program authority or regulation.

C. *Publication of Additional Categorical Exclusions by OPDIVs/STAFFDIVs.* An OPDIV/STAFFDIV may establish additional categorical exclusions that pertain to the actions of that OPDIV/STAFFDIV after approval

by the Assistant Secretary for Management and Budget and publication for public comment in the **Federal Register**, in accordance with the procedures established by that OPDIV/STAFFDIV. All categorical exclusions not covered by the general listing in Section 30–20–40(B)(2) must be published in the **Federal Register**.

30–30–40 Categories of Exclusion

A. *Application of Categorical Exclusions*

1. *Required Determinations.* To find that a proposal is categorically excluded, an OPDIV/STAFFDIV shall determine the following:

(a) *Falls Within Exclusion Category.* The proposed action falls within one of the four exclusion categories described in this section. This determination may take place as the result of a program review of an OPDIV's/STAFFDIV's actions, in which case the action is listed in the OPDIV's/STAFFDIV's administrative issuance system as being categorically excluded from further environmental reviews.

(b) *Absence of Extraordinary Circumstances.* There are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal. Extraordinary circumstances are unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; or unresolved conflicts concerning alternate uses of available resources within the meaning of section 102(2)(E) of NEPA; and where it is reasonable to anticipate a cumulatively significant impact on the environment. See 40 CFR 1508.27 for examples.

2. All categorical exclusions in this Part may be applied by any organizational element of HHS.

3. A class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions (such as associated transportation activities and award of implementing grants and contracts).

B. *Categories of Actions Which May Be Excluded From Environmental Review.* Categories of actions which may be excluded from environmental review include, but are not limited to the following:

1. *Category No. 1—General Exclusions*:

(a) When a law or regulation grants an exception, unless precluded by an OPDIV/STAFFDIV regulation.

(b) When the courts have found that the action does not require environmental review; and

(c) When an action implements actions outside the territorial jurisdiction of the United States and such actions are excluded from review by Executive Order 12114.

2. *Category No. 2—Functional Exclusions:*

(a) Routine administrative and management support, including legal counsel, public affairs, program evaluation, monitoring and individual personnel actions;

(b) Appellate reviews when HHS was the plaintiff in the lower court decision (e.g., a case involving failure by a nursing home to comply with fire and safety regulations);

(c) Data processing and systems analysis;

(d) Education and training grants and contracts (e.g., grants for remedial training programs or teacher training) except projects involving construction, renovation, or changes in land use;

(e) Grants for administrative overhead support (e.g., regional health or income maintenance program administration);

(f) Grants for social services (e.g., support for Head Start, senior citizen programs or drug treatment programs) except projects involving construction, renovation, or changes in land use;

(g) Liaison functions (e.g., serving on task forces, ad hoc committees or representing HHS interests in specific functional areas in relationship with other governmental and non-governmental entities);

(h) Maintenance (e.g., undertaking repairs necessary to ensure the functioning of an existing facility), except for properties on or eligible for listing on the National Register of Historic Places;

(i) Statistics and information collection and dissemination (e.g., collection of health and demographic data and publication of compilations and summaries);

(j) Technical assistance by HHS program personnel, e.g., providing assistance in methods for reducing error rates in State public assistance programs or in determining the cause of a disease outbreak); and

(k) Adoption of regulations and guidelines pertaining to the above activities (except technical assistance and those resulting in population changes).

3. *Category 3—Program Exclusions.* These exclusions, when applicable, result from a substantive review and determination by an OPDIV/STAFFDIV that certain programs or certain activities within a program will not normally (a) significantly affect the human environment (as defined by NEPA) or (b) affect an asset (as defined in an applicable environmental statute or Executive Order) regardless of the location or magnitude of the action. For example, an OPDIV/STAFFDIV, following its review, might determine that the following are unlikely to cause an environmental effect: assigning a member of the Health Service Corps to a locality to supplemental existing medical personnel or providing funds to support expansion of emergency medical services in existing hospitals.

30–20–50 Environmental Review Procedures

An OPDIV/STAFFDIV must conduct environmental reviews with respect to all proposed actions that are subject to an environmental statute or Executive Order which do not fall under categorical exclusions 1, 2, or 3. Chapters 30–30 and 30–50 discuss the process for conducting an environmental review with respect to a specific proposed action and for fulfilling documentation and other requirements. Each OPDIV/STAFFDIV shall ensure that its programs have appropriate procedures for conducting environmental reviews, for completing required documentation, and for ensuring public involvement and intergovernmental consultation. These procedures must be in writing and be included in the internal organizational guidance documents or regulations. These procedures must, at a minimum, address the following:

A. A list of those actions which the OPDIV/STAFFDIV has categorically excluded from further environmental review requirements.

B. A list of those actions or circumstances when actions require an environmental review prior to taking the action.

C. Designation of officials responsible for environment-related activities including determinations as to whether to prepare an environmental impact statement or an environmental assessment, if one is required.

D. Procedures for preparing and circulating environmental statements (including data required by the applicable environmental statute or Executive Order for the type of action covered).

E. Procedures for ensuring the coordination of environmental review with program decision-making, including concurrent development and circulation of environmental documents with program documents and the identification of key decision-making points.

F. Procedures for consulting with other Federal agencies responsible for the environmental statutes or Executive Orders, if necessary.

G. Procedures for developing lead agency agreements (as described in 30–30–20B and 30–50).

H. A prohibition against precluding or prejudicing selection of alternatives in an environmental impact statement without regard to environmental risks.

I. Procedures for establishing a reviewable record, including making environmental statements and related decision-making materials part of the record of formal rule-making and adjudicatory proceedings.

J. Provisions for early consultation and assistance to potential applicants and non-Federal entities in planning actions and developing information necessary for later Federal involvement (as described in 30–30–20C and 30–50).

K. Descriptions of circumstances which preclude completion of environmental reviews within reasonable time frames because of public health and safety considerations and procedures for after-the-fact completion.

L. Provision for ensuring that applications and other materials from potential grantees or other recipients of Departmental funds, on a program-by-program basis, include information necessary to conduct an environmental review. Such information shall include the identification of any properties which may be eligible for listing on the National Register of Historic Places.

M. Provision for identifying cultural assets which a program controls through leases or Federal ownership, and for nominating such historic properties to the National Register of Historic Places.

HHS Chapter 30–30—General Administration Manual; HHS Transmittal 98.2

Subject: General Environmental Review Procedures

30–30–00	Overview
10	Summary Description
20	Environmental Review
30	Environmental Statements
40	Intergovernmental Consultation and Document Review.

30–30–00 Overview

Certain environmental statutes and Executive orders require an environmental review of proposed Federal actions to determine whether such actions will have environmental effects.

The purpose of this chapter is to describe overall the steps which Department officials must take in conducting environmental reviews of specific proposed actions. Within these general steps, the individual environmental acts differ significantly with respect to public involvement, intergovernmental consultation, and documentation required. The chapters at 30–40 and 30–50 following (entitled Natural Asset Review and NEPA Review) discuss these specific requirements in greater detail.

Note: The procedures and requirements in chapters 30–40 and 30–50 take precedence over the general statements in this chapter and must be consulted before determining the steps that must be taken with regard to a specific action. The discussion in this chapter generally does not apply to chapters 30–60 to 30–90.

30–30–10 Summary Description

The following is a summary description of the general types and sequence of activities which Departmental officials should carry out in reviewing specific proposed actions under this Part.

A. Determine that a proposed activity constitutes an action as defined under Section 30–00–30 (Definitions) that is subject to an environmental statute or Executive Order.

B. Determine whether the proposed action is categorically excluded from all environmental review requirements. If it is excluded, no further environmental review is necessary.

C. For proposed actions not categorically excluded, conduct an environmental review in accordance with applicable program environmental review procedures to determine whether the proposed action will cause an environmental effect under one or more of the environmental statutes or Executive Orders.

D. Determine whether it is necessary to prepare an environmental document, e.g., an environmental assessment, and if necessary, an environmental impact statement under NEPA. Circulate the environmental document among the public, Federal, State and local agencies, and other interested parties, as appropriate.

E. Carry out the requirements for public involvement and intergovernmental consultation as required under the applicable environmental statutes or Executive Orders, including any necessary approvals.

F. Prepare the necessary environmental documentation and proceed with the program decision-making process.

30–30–20 Environmental Review

A. *General.* OPDIVs/STAFFDIVs must perform an environmental review for each proposed action not categorically excluded in accordance with the OPDIV's/STAFFDIV's environmental procedures. The purpose of an environmental review is to answer the following general questions: (Individual environmental acts differ with respect to the specific scope and methodology required in conducting an environmental review.)

1. Which environmental statutes or Executive Orders apply to the proposed action?

2. Will a proposed action have an environmental effect under any of the environmental statutes or Executive Orders, as defined in regulation or by court interpretation?

3. Should the HHS OPDIV/STAFFDIV prepare an environmental assessment or an environmental impact statement, given the environmental statutes and Executive Orders involved and the kinds and degree of environmental effects anticipated?

B. *Agreements with Other Agencies.* When two or more agencies are engaged in the same action, a lead agency agreement provides one agency with the authority to conduct the environmental review. These agreements determine the content and type of statement and specify which Federal agency will prepare it. The agreement includes a schedule for the preparation and circulation of the document, as well as an assignment of important tasks among the agencies involved. Lead agency agreements may be signed with other agencies for individual actions or for a particular type of action.

C. *Non-Federal Agencies.* Whenever an HHS program requests or permits a non-Federal agency to perform an environmental review, the program shall outline the type of information required, perform an independent evaluation, and assume responsibility for the scope and content of the material.

30–30–30 Environmental Documents

A. On the basis of the environmental review, OPDIVs/STAFFDIVs shall determine what type of environmental document to prepare. Under NEPA, either an environmental assessment and finding of no significant impact or an environmental impact statement would generally be required. Environmental impact statements are prepared in two stages: draft and final. A final statement includes a consideration of comments submitted by persons or organizations reviewing the draft statement. Under some laws covered by this Part, an environmental assessment may also have to be prepared in draft for review and comment before being finalized.

The chapters at 30–40 and 30–50 following (Natural Asset Review and NEPA Review) discuss these different requirements in greater detail and must be consulted to ascertain the specific requirements of NEPA and each of the related statutes and Executive Orders.

B. Description

1. *Environmental Impact Statements.* An environmental impact statement is a detailed written statement on (i) The environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Draft environmental impact statements shall not exhibit biases in favor of the proposed action. A final statement may include a recommendation with a rationale for a preferred action (see chapter 30–50 for correct NEPA terminology and process).

2. *Environmental Assessments.* An environmental assessment is generally a concise document which provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. It shall include, in detail, the environmental impact of reasonable alternatives. OPDIVs/STAFFDIVs generally can use an environmental assessment in order to satisfy any review, consultation, and public notice requirements of the applicable environmental statutes and Executive Orders and to otherwise inform individuals and organizations who may be interested in or affected by the proposed action (see chapter 30–50 for correct NEPA terminology and process).

C. *Alternatives.* Environmental impact statements must explore and evaluate reasonable alternatives to the proposed action in terms of their environmental consequences, benefits and costs, and contribution to the underlying purpose or goal. Discussion of alternatives must be sufficiently in-depth to permit a meaningful comparison of alternative courses of action.

Environmental impact statements shall consider the following categories of alternatives, as appropriate:

1. *No Action by Any Organization.* This alternative serves as a baseline against which to measure the environmental consequences, costs, and benefits of the proposed action and other alternatives.

2. *Action Alternatives.* One or more alternative courses of action directed at achieving the underlying purpose or goal. The environmental impact statement cannot automatically exclude actions.

- Outside the expertise or jurisdiction of Departmental organizations, *e.g.*, examining the possible use of other real properties other than that proposed for transfer by HHS; or
- Which only partially achieve an underlying goal or objective, *e.g.*, funding a health care facility at a lower capacity for patient care. However, action alternatives considered must be reasonably available, practicable, and be related to the underlying purpose or goal. An environmental impact statement must include all reasonable alternatives.

3. *Alternative Safeguards.* These are alternative actions which could mitigate the adverse environmental consequences of one or more of the action alternatives.

4. *Delayed Action Alternative.* This alternative is to postpone or delay a proposed action in order to conduct more research or for other reasons.

5. *Alternative Uses.* When a proposed action would affect a scarce or valuable resource (*e.g.*, prime agricultural farmland), the potential alternative uses of the resource must be identified so that they may be compared with the value of the proposed action.

30–30–40 Intergovernmental Consultation and Document Review

OPDIVs/STAFFDIVs are responsible for meeting the various requirements under environmental statutes and Executive Orders for intergovernmental consultation and public involvement. These requirements differ significantly. OPDIVs/STAFFDIVs must refer to the more detailed descriptions in 30–40 and 30–50 and should consult an environmental officer for guidance.

As required, OPDIVs/STAFFDIVs shall circulate draft environmental impact statements for review and comment, and otherwise make then available to the public upon request to the extent such statements are not protected from disclosure by existing law applicable to the agency's operation. Statements should be circulated to the Federal agency responsible for administering the applicable environmental act, involved non-Federal agencies at the State or local level, and interested public persons or groups within the geographic area of the environment affected. The review period is generally no less than 30 days for a draft environmental assessment and no less than 60 days for a draft environmental impact statement. Whenever a draft environmental impact statement is significantly revised because of comments received or because the nature or scope of the proposed action changes significantly, OPDIVs/STAFFDIVs shall prepare a new draft environmental impact statement for circulation. Circulation of certain portions of the document is not necessary when it involves the following:

A. *National Security.* Circulation of classified sections of environmental documents is subject to regulations pertaining to matters of national security.

B. *Trade Secrets.* Circulation of sections of environmental documents that disclose a trade secret is subject to 18 U.S.C. 1905 or 21 U.S.C. 331(j) governing the protection and disclosure of trade secrets.

HHS Chapter 30–40—General Administration Manual; HHS Transmittal 98.2

Subject: Natural Asset Review

30–40–00	Applicability of Consultation Requirements
05	Integration with NEPA Review Process
10	Coastal Zone Management Act of 1972
20	Endangered Species Act of 1973
30	Fish and Wildlife Coordination Act
40	Floodplain Management
50	Marine Protection, Research, and Sanctuaries Act of 1972
60	Safe Drinking Water Act (Sole Source Aquifers)
70	Wetlands Protection
80	Wild and Scenic Rivers Act

30–40–00 Applicability of Consultation Requirements

The environmental statutes and Executive Orders described in this chapter require consideration of the effects of a proposed action on specific types of places or species. Generally, they prohibit further action until the Federal agency proposing to take action has consulted with the Federal or State agency responsible for administering the law. The species requiring consideration are listed by the Department of the Interior. The places requiring consideration are:

A. Coastal Zones (as identified in a State coastal zone management plan);

B. Habitats of Endangered Species (as identified by the Department of the Interior);

C. Streams and other bodies of water;

D. Floodplains (as identified on HUD floodplain maps);

E. Marine Sanctuaries (as identified by the Secretary of Commerce);

F. Sole Source Aquifers (as identified by the Environmental Protection Agency);

G. Wetlands (all); and

H. Wild and Scenic Rivers (as identified by the Departments of the Interior and Agriculture).

Tables 1 indicates whether the administering agency has published regulations implementing the consultation requirement. OPDIVs/STAFFDIVs are responsible for consulting with the appropriate Federal or State agency before taking action in accordance with the procedures in this chapter and in the applicable statute, Executive Order, or implementing regulation.

TABLE 1.—AGENCY CONSULTATION PROCEDURES

Natural asset statute or executive order	Citation	Consultation procedures
Coastal Zone Management Act of 1972	16 U.S.C. §§ 1451–1464	15 CFR Part 930.
Endangered Species Act of 1973	16 U.S.C. §§ 1531–1544	50 CFR Part 402.
Fish and Wildlife Coordination Act	16 U.S.C. §§ 661–666c	16 U.S.C. § 662.
Executive Order 11988, Floodplain Management.	42 FR 26951 (1977), as amended by E.O. 12148, 44 FR 43239 (1979); 16 U.S.C. § 4321 note.	Floodplain Management Guidelines, U.S. Water Resources Council, 43 FR 6030 (1978).
Marine Protection, Research, and Sanctuaries Act of 1972.	16 U.S.C. §§ 1431–1445a, 33 U.S.C. §§ 1401–1445..	
Safe Drinking Water Act	42 U.S.C. §§ 300F–300J–26	42 U.S.C. § 300h–3, 40 CFR Part 149.
Executive Order 11990, Protection of Wetlands	42 FR 26961 (1977), as amended by E.O. 12608, 52 FR 34617 (1987), 42 U.S.C. § 4321 note.	
Wild and Scenic Rivers Act	16 U.S.C. §§ 1271–1287	36 CFR Part 297.

30–40–05 Integration With NEPA Review Process

OPDIVs/STAFFDIVs are responsible for reviewing all proposed actions to determine whether they will affect places and species described in this chapter. OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in accordance with the procedures for National Environmental Policy Act (NEPA) review in chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, the documentation required by the applicable statute or Executive Order and the administrating agency regulations are to be included in the EA or EIS. In addition, the consultation procedures required by the environmental statute or Executive Orders shall be followed.

30–40–10 Coastal Zone Management Act of 1972

A. *Purpose.* The Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C 1451–1464, declares that it is the national policy ''to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone...'' In furtherance of this policy, the Act provides Federal assistance to State for developing and implementing coastal zone management programs. Section 307(c)(1)(A) of the CZMA (16 U.S.C. 1456(c)(1)(A)) provides that ''[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.''

National Oceanic and Atmospheric Administration (NOAA) regulations codified at 15 CFR Part 930, Subpart C—Consistency for Federal Activities, implements section 307 of the CZMA. These ''consistency'' regulations are designed to assure that all Federally conducted or supported activities, including development projects, directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

B. Definitions

1. *Federal activity.* The term ''Federal activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term ''Federal activity'' does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency.

2. *Federal development project.* The term ''Federal development project'' means a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

3. *Coastal Zone.* The CZMA defines the term ''coastal zone'' as ''the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.'' Zone boundaries are described in 16 U.S.C. 1453(1). The CZMA excludes from the definition of coastal zone lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents (*e.g.*, nonterminated California Indian rancherias).

4. *''Consistent to the maximum extent practicable.''* The term ''consistent to the maximum extent practicable'' describes the requirement for Federal activities, including development projects, directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations.

C. *Requirement.* An OPDIV/STAFFDIV undertaking any development project in the coastal zone of a State shall ensure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.

OPDIVs/STAFFDIVs shall determine which of their activities directly affect the coastal zone of States with approved management programs. OPDIVs/STAFFDIVs shall consider all development projects within the coastal

zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to OPDIV/STAFFDIV review to determine whether they directly affect the coastal zone. Federal activities outside of the coastal zone are subject to OPDIV/STAFFDIV review to determine whether they directly affect the coastal zone.

D. *Integration with NEPA.* OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action affecting a coastal zone in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a consistency determination, described in 30–40–10E, shall be included in the EA or EIS.

E. *Consistency Determination.* OPDIVs/STAFFDIVs shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. OPDIVs/STAFFDIVs are encouraged to consult with State agencies during their efforts to assess whether an action will be consistent to the maximum extent practicable with a State management program.

A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the OPDIV/STAFFDIV reaches a significant point of decision-making in its review process. An OPDIV/STAFFDIV shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) of the CZMA (16 U.S.C. 1455(d)(6)) at the earliest practicable time in the planning or reassessment of the activity, but in no case later than 90 days before final approval of the Federal activity, unless both the OPDIV/STAFFDIV and the State agency agree to a different schedule.

OPDIVs/STAFFDIVs must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, OPDIVs/STAFFDIVs need only give adequate consideration to management program provisions which are in the nature of recommendations. Finally, OPDIVs/STAFFDIVs do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

F. *Negative Determination.* If a OPDIV/STAFFDIV asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the OPDIV's/STAFFDIV's discretion to comply with the provisions of the management program.

If a OPDIV/STAFFDIV decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the OPDIV/STAFFDIV undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the OPDIV/STAFFDIV shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the OPDIV/STAFFDIV and the State agency agree to an alternative notification schedule.

G. *Content of a consistency determination.* The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal zone effects, and comprehensive data and information sufficient to support the consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

If HHS standards are more restrictive than standards or requirements contained in the State's management program, the State should be informed in the consistency determination of the statutory, regulatory, or other basis for the application of the stricter standards.

If an OPDIV/STAFFDIV asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the OPDIV's/STAFFDIV's discretion to comply with the provisions of the management program.

H. *State Review Period.* A state agency is required to inform the OPDIV/STAFFDIV of its agreement or disagreement with the consistency determination at the earliest practicable time. OPDIVs/STAFFDIVs may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the consistency determination. State agency agreements shall not be presumed in cases where the State agency, within the 45 day period, requests an extension of time to review the matter.

OPDIVs/STAFFDIVs shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, consideration should be given by the OPDIV/STAFFDIV to the magnitude and complexity of the information contained in the consistency determination.

1. *Final Action.* An OPDIV/STAFFDIV shall not undertake final action sooner than 90 days from the issuance of the consistency or negative determination to the State agency unless both the OPDIV/STAFFDIV and the State agency agree to an alternative period.

J. *Mediation by Secretary of Commerce.* In the event of a serious disagreement between an OPDIV/STAFFDIV and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in Subpart G of 15 CFR Part 930.

K. *Licenses, permits.* OPDIVs/STAFFDIVs shall follow the procedures in 15 CFR part 930 when the action involves an applicant for a Departmental license or permit.

L. *Excluded Actions.* The requirements in this section shall not apply to those types of actions which are specifically excluded by the approved CZM plan.

30–40–20 Endangered Species Act of 1973

A. *Purpose.* The Endangered Species Act of 1973, 16 U.S.C. 1531–1544, directs Federal agencies, in consultation with either the Secretary of the Interior or of Commerce, as appropriate, to carry out conservation programs for endangered or threatened species of fish, wildlife, or plants (''listed species'') and habitat of such species that has been designated as critical (''critical habitat'').

Such affirmative conservation programs must comply with applicable permit requirements for listed species and should be coordinated with the appropriate Secretary.

Section 7(a)(2) of the Act (16 U.S.C. 1536(a)(2)) requires every Federal agency, in consultation with the assistance of the appropriate Secretary, to ensure that any action it authorizes, funds, or carries out, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The Act also requires Federal agencies to confer with the Secretary of the Interior or of Commerce on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. The Act prohibits Federal agencies from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would avoid jeopardizing the continued existence of listed species or the destruction or adverse modification of critical habitat. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibilities for administering the Act.

B. Governing Regulations and Organization Responsible for Consultation. Interagency consultation procedures under the Endangered Species Act are codified at 50 CFR part 402. The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 and 17.12. The designated critical habitats are found in 50 CFR 17.95 and 17.96 and 50 CFR part 226. Endangered or threatened species under the jurisdiction of the NMFS are located in 50 CFR 222.23(a) and 227.4. If the subject species is cited in 50 CFR 222.23(a) or 227.4, an OPDIV/STAFFDIV shall contact the NMFS. For all other listed species, an OPDIV/STAFFDIV shall contact the FWS.

C. *Definitions.* The regulations governing interagency cooperation and consultation under the ESA in 50 CFR part 402 define many of the terms and phrases that are used in the regulations and this section.

1. *Biological Assessment.* A biological assessment is a document, prepared by or under the direction of a Federal agency, concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential effects of the action on such species and habitat.

2. *Biological Opinion.* A biological opinion is the document that states the Service's opinion as to whether or not a proposed Federal agency action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The Service may issue one of two types of opinions:

(a) *Jeopardy Biological Opinion.* An opinion by the Service that the proposed Federal agency action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat is called a ''jeopardy biological opinion''.

(b) *No Jeopardy Biological Opinion.* An opinion by the Service that the proposed Federal agency action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat is called a ''no jeopardy'' biological opinion.

3. *Director.* The term ''Director'' refers to, as appropriate, the:

(a) Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration or an authorized representative; or

(b) Fish and Wildlife Service Regional Director, or authorized representative, for the region where the action would be carried out.

4. *Listed Species.* Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under Section 4 of the Act. Listed species are found in 50 CFR 17.11–17.12.

5. *Service.* The term ''Service'' means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

D. *Integration with NEPA.* The consultation, conference, and biological assessment procedures required by section 7 of ESA that are summarized in this section may be consolidated with interagency cooperation procedures required by other statutes, such as the National Environmental Policy Act (NEPA) (Chapter 30–50) or the Fish and Wildlife Coordination Act (FWCA) (Chapter 30–40). Satisfying the requirements of these other statutes, however, does not in itself relieve an OPDIV/STAFFDIV of its obligations to comply with the procedures set forth in 50 CFR part 402 or the substantive requirements of section 7 of ESA. Where the consultation or conference has been consolidated with the interagency cooperation procedures required by other statutes such as NEPA or FWCA, the results should be included in the documents required by those statutes.

E. *Conference Regarding Proposed Species or Critical Habitat.* An OPDIV/STAFFDIV shall confer with the Director of the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is an informal process that is designed to assist in identifying and resolving potential conflicts at an early stage in the planning process and can result in advisory recommendations from the Service regarding ways to minimize or avoid adverse effects from the proposed action. If the proposed species is subsequently listed or the proposed critical habitat is designated prior to completion of an HHS action, the responsible OPDIV/STAFFDIV shall review the action to determine whether formal consultation is required. An OPDIV/STAFFDIV may request that a conference be conducted in accordance with the formal consultation procedures in 50 CFR 402.14.

The conclusions reached during a conference and any recommendations will be documented by the Service and provided to the OPDIV/STAFFDIV. The results of the conference shall be included in the HHS organization's appropriate documentation if the proposed action is being reviewed in accordance with NEPA procedures in Chapter 30–50.

F. *Biological Assessment.*

1. *Purpose.* An OPDIV/STAFFDIV shall use the biological assessment in determining whether a conference is required with the Service. If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, and the Director concurs, then a conference is not required. The Director may use the results of the biological assessment in (1) determining whether to request the OPDIV/STAFFDIV to initiate a conference, (2) formulating a biological opinion, or (3) formulating a preliminary biological opinion.

2. *Requirement.* A biological assessment shall be prepared for all major construction activities. The biological assessment shall be completed before any contract for construction is entered into and before construction is begun.

3. *Request for information.* The OPDIV/STAFFDIV shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action

area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment. Within 30 days of receipt of the notification of, or the request for, a species list, the Director shall either concur with or revise the list. If the Director advises that no listed species or critical habitat may be present, a biological assessment and further consultation is not required. If only proposed species or proposed critical habitat may be present in the action area, the OPDIV/STAFFDIV must confer with the Service if required under 50 CFR 402.10, but preparation of a biological assessment is not required unless the proposed listing and/or designation becomes final.

4. *Contents.* The contents of a biological assessment are at the discretion of the submitter and will depend on the nature of the Federal action. The following may be considered for inclusion:

(a) The results of an on-site inspection of the area affected by the action to determine if listed or proposed species are present or occur seasonally;

(b) The views of recognized experts on the species at issue;

(c) A review of the literature and other information;

(d) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of any related studies;

(e) An analysis of alternate actions considered by the Federal agency for the proposed action.

5. *Submission of Biological Assessment.* The OPDIV/STAFFDIV shall submit the completed biological assessment to the Director for review within 180 days after its initiation. The Director will respond in writing within 30 days as to whether or not the Director concurs with the findings of the biological assessment. An OPDIV/STAFFDIV, at its option, may request that formal consultation be initiated concurrently with the submission of the assessment.

G. *Formal Consultation Process for Listed Species and Critical Habitat.*

1. *Consultation Requirement.* An OPDIV/STAFFDIV shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required, except as noted in this subsection. An OPDIV/STAFFDIV need not initiate formal consultation if, as a result of the preparation of a biological assessment under 50 CFR 402.12 or as a result of information consultation with the Service under 50 CFR 402.13, the OPDIV/STAFFDIV determines, with the written concurrence of the Director of the Service, that the proposed action is not likely to adversely affect any listed species or critical habitat. Formal consultation shall not be initiated by an OPDIV/STAFFDIV until any required biological assessment has been completed and submitted to the Director in accordance with 50 CFR 402.12.

2. *Contents of Request.* A written request to initiate formal consultation shall be submitted to the Director of the Service and shall include:

(a) A description of the action to be considered;

(b) A description of the specific area that may be affected by the action;

(c) A description of any listed species or critical habitat that may be affected by the action;

(d) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;

(e) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(f) Any other relevant available information on the action, the affected listed species, or critical habitat.

An OPDIV/STAFFDIV that requests formal consultation shall provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species or critical habitat.

H. *Irreversible or Irretrievable Commitment of Resources.* After initiation or reinitiation of consultation required under ESA, an OPDIV/STAFFDIV shall make no irreversible or irretrievable commitment of resources with respect to the proposed action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating ESA. This prohibition remains in force during the consultation process and continues until the requirements of section 7(a)(2) of ESA are satisfied.

Note: The prohibition in this subsection does not apply to the conference requirement for proposed species or proposed critical habitat under Section 7(a)(4) of the Act.

I. *Duration and Extension of Formal Consultation.* Formal consultation concludes within 90 days after its initiation unless extended in accordance with 50 CFR 402.14(e). If the Service does not respond within 90 days, the Department may reach its own conclusion with respect to whether the proposed action will jeopardize the continued existence of a species or result in the destruction or adverse modification of a critical habitat.

J. *Issuance of Biological Opinion.* The Service will provide a biological opinion to the OPDIV/STAFFDIV at the end of the consultation process as to whether the proposed action, taken together with cumulative effects, would be likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of a critical habitat. A ''jeopardy'' biological opinion by the Service will include reasonable and prudent alternatives, if any, to the proposed agency action that can be taken by the OPDIV/STAFFDIV to avoid violation of ESA. If the Service is unable to develop such alternatives, it will indicate that to the best of its knowledge, there are no reasonable and prudent alternatives. The Service may also formulate discretionary conservation recommendations, if any, which will assist the OPDIV/STAFFDIV in reducing or eliminating the impacts that its proposed action may have on listed species or critical habitat.

The Service's ''no jeopardy'' or ''jeopardy'' biological opinion shall be included in any documentation required under NEPA procedures if the proposed action is being assessed in accordance with NEPA and the procedures in Chapter 30–50.

K. *Termination of Consultation Process.* Formal consultation is terminated with the issuance of the biological opinion or if, during any stage of consultation, an OPDIV/STAFFDIV determines, with the concurrence of the Director, that its proposed action is not likely to adversely affect any listed species or critical habitat. If an OPDIV/STAFFDIV determines that its proposed action is not likely to occur, it may terminate the consultation process by written notice to the Service.

L. *Responsibilities After Issuance of Biological Opinion.* Following the issuance of a biological opinion, an OPDIV/STAFFDIV shall determine whether and in what manner to proceed with the action in light of its ESA Section 7 obligations and the Service's biological opinion.

If a jeopardy biological opinion is issued, the OPDIV/STAFFDIV shall notify the Service of its final decision on the action. If the OPDIV/STAFFDIV determines that it cannot comply with the requirements of section 7(a)(2) of ESA after consultation with the Service, it may apply for an exemption. Procedures for exemption applications by Federal agencies and others are found in 50 CFR part 451. No action

shall occur unless or until the OPDIV/STAFFDIV has received approval of the exemption.

M. *Emergencies.* The interagency cooperation regulation in 50 CFR part 402 provides that where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)–(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies. An OPDIV/STAFFDIV may request expedited consultation by submitting information on the nature of the emergency action(s), the justification for the expedited consultation, and the impacts to endangered or threatened species and their habitats. Formal consultation is to be initiated as soon as practicable after the emergency is under control.

N. *Exemptions.* ESA provides procedures for granting exemptions from the requirements of section 7(a)(2). Regulations governing the submission of exemption applications are found at 50 CFR part 451, and regulations governing the exemption process are found at 50 CFR parts 450, 452, and 453.

O. *Applicant Procedures.* ESA and the implementing procedures in 50 CFR part 402 provide for participation in the conference and consultation processes by any person (as defined in Section 3 (13) of the Act) who requires formal approval or authorization from HHS as a prerequisite to conducting the action.

30–40–30 Fish and Wildlife Coordination Act

A. *Purpose.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, provides for equal consideration of wildlife with other features of water resource development programs with a view toward conservation of wildlife resources. The Act requires Federal agencies involved in actions that will result in the control or modification of any natural stream or body of water, for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action and to affirmatively provide development and improvement of the wildlife resources in connection with the proposed action.

B. *Responsibilities and Consultation Requirements.*

1. An OPDIV/STAFFDIV shall consult, in accordance with 16 U.S.C. 662, with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the State agency exercising administration over wildlife resources, before taking or approving an action that would control or modify any natural stream or other body of water for any purpose.

2. As part of the consultative process, OPDIVs/STAFFDIVs shall submit to the United States Fish and Wildlife Service and the State wildlife agency the appropriate environmental documentation, if needed for the consultation, that describes the possible effects of the proposed action on a natural stream or body of water.

3. An OPDIV/STAFFDIV shall determine, through the consultative process, the means and measures necessary to conserve wildlife resources by preventing loss of and damage to such resources, as well as providing for the development and improvement of the wildlife resources in connection with the proposed action.

4. OPDIVs/STAFFDIVs shall give full consideration to the report and recommendations of the U.S. Fish and Wildlife Service and to any report of the State agency on the wildlife aspects of a proposed action. Any plans for the proposed action shall include such justifiable means and measures for wildlife purposes as the OPDIV/STAFFDIV finds should be adopted to obtain maximum overall project benefits. All reports and recommendations of the U.S. Fish and Wildlife Service wildlife agencies shall constitute an integral part of any environmental report prepared pursuant to the action.

5. Reports and recommendations of the Secretary of Interior or State wildlife agencies shall be incorporated into any environmental documents that may be associated with the proposed action. 16 U.S.C. 662(b).

6. No further action shall take place pending receipt of a report from the U.S. Fish and Wildlife Service and State wildlife agency.

30–40–40 Floodplains Management

A. *Purpose.* Executive Order 11988, Floodplain Management, 42 FR 26951 (1977), as amended by Executive Order 12148, 44 FR 43239 (1979), 42 U.S.C. 4321 note, directs each Federal agency to avoid the long and short term adverse impacts associated with the occupancy and modification of floodplains, including the direct and indirect support of floodplain development, whenever there is a practicable alternative. Floodplains are those areas identified as such according to a Federal Emergency Management Agency (FEMA) floodplain map. Guidance for implementation of Executive Order 11988 is provided in the U.S. Water Resources Council Floodplain Management Guidelines, 43 FR 6030. See also FEMA's ''Further Advice on Executive Order 11988 Floodplain Management'' (GPO 1987).

B. Definitions

1. *Base Flood.* ''Base Flood'' means that flood which has a one percent of greater chance of occurrence in any given year.

2. *Floodplain.* ''Floodplain'' means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

3. *Critical Action.* ''Critical Action'' means any activity for which even a slight chance of flooding is too great, e.g. elderly housing proposals.

C. *Responsibilities.* Each OPDIV/STAFFDIV has the responsibility under Executive Order 11988 to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for:

1. Acquiring, managing, and disposing of Federal lands and facilities;

2. Providing Federally undertaken, financed, or assisted construction and improvements; and

3. Conducting Federal activities and programs affected land use, including but not limited to, water and related land resources planning, regulating, and licensing activities.

Each OPDIV/STAFFDIV shall evaluate the potential effects of any actions it may take in a floodplain in accordance with the procedures in this section. It must also ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management.

D. *Floodplain Determination.* Before taking an action, each OPDIV/STAFFDIV shall determine whether the proposed action will occur in a floodplain. OPDIVs/STAFFDIVs shall utilize the Flood Insurance Rate Maps (FIRMs) or the Flood Hazard Boundary Maps (FHBMs) prepared by the Federal Insurance Administration of FEMA to determine if a proposed action is located in a base or critical action floodplain. When a proposed action would be located in an area of predominantly Federal or State land holdings, and FIRM or FHBM maps are not available, OPDIVs/STAFFDIVs shall obtain information from the land administering agency (e.g., Bureau of Land Management or Soil Conservation Service) or from agencies with floodplain analysis expertise.

E. *Integration with NEPA.* OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in a floodplain in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a floodplain assessment, described in 30–40–40D, shall be included in the EA or EIS.

F. *Floodplain Assessment (Executive Order 11988).*

1. *Proposed Action.* The floodplain assessment shall describe the nature and purpose of the proposed action and the reasons for locating the action in the floodplain.

2. *Floodplain Map.* A map of the affected floodplain indicating the location of the proposed action shall be included in the assessment.

3. *High Hazard Areas.* High hazard areas in the floodplain shall be delineated and the nature and extent of the proposed hazard shall be discussed.

4. *Floodplain Effects.* The effects of the proposed action on the floodplain shall be discussed in the assessment. The discussion shall include an evaluation of the long- and short-term effects of the proposed action on people, property, natural and beneficial floodplain values, and any other relevant direct or indirect effects.

5. *Alternatives and Mitigation Measures.* The floodplain assessment shall discuss alternatives to the proposed action that may avoid adverse effects and incompatible development in the floodplain, including the alternatives of no action or location at an alternate site. The assessment shall also discuss measures that mitigate the adverse effects of the proposed action.

6. *Conformity to Applicable State or Local Standards.* The floodplain assessment shall include a statement indicating whether the proposed action conforms to applicable State or local floodplain protection standards.

7. *Flood Insurance Program Standards.* An action taken in a floodplain must incorporate design features consistent with the standards in the Flood Insurance Program of the Federal Insurance Administration to minimize substantial harm to the floodplain.

G. *Public Review.* Circulation of draft environmental impact statements shall include the public and other interested individuals, including concerned Federal, non-Federal and private organizations. Interested parties shall have a period of 60 days for review and comment on draft environmental impact statements.

H. *Secretarial Approval.* No action shall take place without a finding by the HHS Secretary that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 requires siting in a floodplain. The action proposed for Secretarial approval shall be designed to minimize potential harm to or within the floodplain. The Secretary shall approve proposed actions requiring environmental impact statements on projects affecting floodplains.

I. *Notice of Finding.*

1. *Contents.* After Secretarial approval and prior to taking action, an OPDIV/STAFFDIV shall prepare and circulate a notice of finding containing an explanation of why the action is proposed to be located in a floodplain. The notice shall not exceed three pages and shall include a location map. The notice shall include (a) the reasons why the action is proposed to be located in a floodplain; (b) a statement indicating whether the action conforms to applicable State or local floodplain protection standards; and (c) a list of the alternatives considered.

2. *Public Review.* For programs subject to Executive Order 12372, the notice of finding shall be sent to the appropriate state and local reviewing agencies the geographic areas affected. A public review period of 30 days after the issuance of notice of finding shall be allotted before any action is taken.

J. *Licenses, permits, loans, or grants.* Each OPDIV/STAFFDIV shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Adequate provision shall be made for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan, or grant-in-aid programs that an OPDIV/STAFFDIV administers. OPDIVs/STAFFDIVs shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposal in floodplains prior to submitting applications for Federal licenses, permits, loans, or grants.

K. *Authorization or Appropriation Requests.* OPDIVs/STAFFDIVs shall indicate in any requests for new authorizations or appropriations whether the proposed action is in accord with Executive Order 11988 if the proposed action will be located in a floodplain.

30–40–50 Marine Protection, Research, and Sanctuaries Act of 1972

A. *Purpose.* Title III of the Marine Protection, Research and Sanctuaries Act prohibits Federal Departments from taking actions which will affect a Marine Sanctuary unless the Secretary of Commerce certifies that the activity is consistent with the purposes of the Act. Listings of sanctuaries are designated by the Secretary of Commerce and maps of sanctuaries appear in the **Federal Register**.

B. *Responsibilities and Consultation Requirements.*

1. If the proposed action will create an environmental effect on a marine sanctuary, OPDIVs/STAFFDIVs shall prepare an appropriate environmental document and forward it to the Secretary of Commerce.

2. No further action shall take place unless and until the Secretary certifies that the action is consistent with the purposes of the Act.

30–40–60 Safe Drinking Water Act (Sole Source Aquifers)

A. *Requirement.* Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)), provides for the protection of those aquifers which have been designated by the Administrator of the EPA as the sole or principal source of drinking water for an area. No commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health. A commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

B. *Responsibilities and Consultation Requirements.*

1. OPDIVs/STAFFDIVs shall determine if a proposed action will directly or indirectly affect a sole or principal source aquifer designated by the Administrator of EPA in accordance with section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

2. If the action will affect a designated aquifer, OPDIVs/STAFFDIVs shall send the appropriate environmental document to the EPA Regional Administrator for a determination as to whether the proposed action may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

3. The action shall not proceed unless and until the Administrator of the Environmental Protection Agency determines that the proposed action will not contaminate the designated aquifer so as to create a significant hazard to public health.

30–40–70 Wetlands Protection

A. *Purpose.* Executive Order 11990, Protection of Wetlands, 42 FR 26961 (1977), as amended by Executive Order 12608, 52 F 34617 (1987), 42 U.S.C. 4321 note, directs each Federal agency to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance such wetlands in carrying out their program responsibilities. Consideration must include a variety of factors, such as water supply, erosion and flood prevention, maintenance of natural systems, and potential scientific benefits.

B. Definitions

Wetlands. The term ''wetlands'' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas.

C. *Wetlands Determination.* OPDIVs/STAFFDIVs shall utilize information available from the following sources when appropriate to determine the applicability of the wetlands protection requirements of this section:

1. U.S. Department of Agriculture Soil Conservation Service Local Identification Maps;

2. U.S. Fish and Wildlife Service National Wetlands Inventory;

3. U.S. Geological Survey Topographic Maps;

4. State wetlands inventories; and

5. Regional or local government-sponsored wetland or land use inventories.

D. *Responsibilities.* OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in wetlands in accordance with the procedures for National Environmental Policy Act (NEPA) review in Chapter 30–50. If an environmental assessment (EA) or environmental impact statement (EIS) is required to be prepared for the proposed action, a wetlands assessment, described in 30–40–70E, shall be included in the EA or EIS.

E. *Wetlands Assessment (Executive Order 11990)*

1. *Proposed Action.* The wetlands assessment shall describe the nature and purpose of the proposed action and the reasons for locating the action in the wetlands.

2. *Wetlands Map.* A map of the affected wetlands indicating the location of the proposed action shall be included in the assessment.

3. *Wetlands Effects.* The effects of the proposed action on the wetlands shall be discussed in the assessment. The discussion shall include an evaluation of the long- and short-term effects of the proposed action on the survival, quality, and natural and beneficial values of the wetlands, and any other relevant direct or indirect effects.

4. *Alternatives and Mitigation Measures.* The wetlands assessment shall discuss alternatives to the proposed action that may avoid adverse effects and incompatible development in the wetlands, including the alternatives of no action or location at an alternate site. The assessment shall also discuss measures that mitigate the adverse effects of the proposed action. No further action shall take place until the OPDIV/STAFFDIV makes a decision that the proposed action includes all reasonable measures to minimize harm to the wetlands as a result of the proposed action.

5. *Conformity to Applicable State or Local Standards.* The wetlands assessment shall include a statement indicating whether the proposed action conforms to applicable State or local wetlands protection standards.

F. *Public Review.* Circulation of draft environmental impact statements shall include the public and other interested individuals, including concerned Federal, non-Federal and private organizations. Interested parties shall have a period of 60 days for review and comment on daft environmental impact statements.

G. *Secretarial Review.* No further action shall take place until the Secretary of HHS determines that there is no practicable alternative to construction in wetlands and that the proposed action includes all practicable measures to minimize harm to the wetlands. The Secretary shall approve proposed actions requiring environmental impact statements for new construction in wetlands.

H. *Licenses and Permits.* These requirements do not apply to the issuance to individuals of permits and licenses and the allocation of funds made to individuals.

30–40–80 Wild and Scenic Rivers Act

A. *Purpose.* The purpose of the Act is to preserve selected free-flowing rivers, along with their immediate environments, for the benefit of immediate and future generations. These include river components and potential components of the National Wild and Scenic River System and study areas designated by the Secretaries of Agriculture and Interior. (Environmental officers keep a list of these rivers and related study areas). Designations used to describe these components, or parts thereof, include the following: (1) wild; (2) scenic; and (3) recreational.

B. *Requirement.* Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1278), provides for the protection of the free-flowing, scenic, and natural values of rivers designated as components or potential components of the National Wild and Scenic Rivers Systems from the effects of construction of any water resources project. The Wild and Scenic Rivers Act provides that no license, permit, or other authorization can be issued for a Federally assisted water resources project on any portion of a Wild and Scenic River or Study River (nor can appropriations be requested to begin construction of such projects) without prior notice to the Secretary of Agriculture and the Secretary of the Interior, and a determination in accordance with section 7 of the Act. The Secretary of Agriculture and the Secretary of the Interior have issued Federal agency consultation procedures that are codified at 36 CFR part 297.

C. Definitions

1. *Free-flowing.* ''Free-flowing'' is defined by section 16(b) of the Act as ''existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway'' (16 U.S.C. 1286(b)).

2. *Study Period.* ''Study period'' means the time during which a river is being studied as a potential component of the Wild and Scenic Rivers System and such additional time as provided in section 7(b)(ii) of the Act not to exceed 3 additional years during which a report recommending designation is before Congress, or such additional time as may be provided by statute.

3. *Study River.* ''Study river'' means a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to section 5(a) of the Act.

4. *Water Resources Project.* ''Water resources project'' means any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063) as amended, or other construction of developments which would affect the

free-flowing characteristics of a Wild and Scenic River or Study River.

5. *Wild and Scenic River.* ''Wild and scenic river'' means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to section 3(a) or 2(a)(ii) of the Act.

D. *Responsibilities and Consultation Requirements.* When a proposed action will have an effect upon an environment within or including a portion of a component, potential component, or study area, program personnel shall send a notice to the Secretary of the Interior for review.

E. *Contents of Notice.* The notice shall include the following information:

1. Name and location of affected river;

2. Location of the project;

3. Nature of the permit or other authorization proposed for issuance;

4. A description of the proposed activity; and

5. Any relevant information; such as plans, maps, and environmental studies, assessments, or environmental impact statements.

6. The notice shall also provide any additional factual information that will assist the Secretary in determining whether:

(a) the water resources project will have a direct and adverse effect on the values for which a Wild and Scenic River or Study River was designated, when any portion of the project is within the boundaries of said river; or,

(b) The effects of the water resources project will invade or unreasonably diminish the scenic, recreational, and fish and wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River; or,

(c) whether the effects of the water resources project will invade or diminish the scenic, recreational, and fish and wildlife values of a Study River when the project is located above, below, or outside the Study River during the study period.

F. *Examples.* The following are examples of circumstances which can affect a river component or study area;

1. Destruction or alteration to all or part of the free-flowing nature of the river;

2. Introduction of visual, audible, or other sensory intrusions which are out of character with the river or alter its setting;

3. Deterioration of water quality; or

4. Transfer of sale of property adjacent to an inventories river without adequate conditions or restrictions for protecting the river and its surrounding environment.

G. *Response.* If the Department of the Interior does not respond within 30 calendar days or states that the proposed action will not directly or adversely affect the area, the Department is in compliance with the review requirements of the Act. However, in those instances where the Department of the Interior does not respond, programs shall take care to always avoid or mitigate adverse effects on river components and study areas.

If the Department of the Interior determines that the proposed action will directly and adversely affect the area, no further action shall take place whenever the proposed action involves the construction of a water resources project.

The above requirements do not apply to types of actions excluded from the review process by appropriate Department of Interior or Agriculture regulations.

H. *Integration with NEPA.* The determination of the effects of a proposed water resources project shall be made in compliance with the National Environmental Policy Act (NEPA). To the extent possible, OPDIVs/STAFFDIVs should ensure that any environmental studies, assessments, or environmental impact statements prepared for a water resources project adequately address the environmental effects on resources protected by the Wild and Scenic Rivers Act, and that the Department of Agriculture is apprised of ongoing analyses so as to facilitate coordination and identification of Wild and Scenic River related issues.

To the extent practicable, impacts on Wild and Scenic River values will be considered in the context of other review procedures as provided by law. OPDIVs/STAFFDIVs are encouraged to consult with the Forest Service in order to identify measures which could eliminate any direct and adverse effects, thereby increasing the likelihood of securing consent.

HHS Chapter 30–50—General Administration Manual; HHS Transmittal 98.2

Subject: National Environmental Policy Act (NEPA) Review

30–50–00 Background

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370d, establishes policy and requirements governing all Federal Departments and agencies with respect to protecting the environment. This chapter supplements specific requirements established by NEPA and by the associated implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR 1500–1508). This chapter also establishes Department policy and procedures with respect to the implementation of NEPA and provides guidance to HHS Staff Divisions (STAFFDIVs) and Operating Divisions (OPDIVs) in establishing additional regulations for implementing NEPA that are unique to each OPDIV/STAFFDIV.

NEPA requires all Federal Departments and agencies to assess, as an integral part of their decision making process, the potential environmental impacts of their actions prior to initiation of those actions. NEPA establishes environmental policy, sets goals (Section 101), and provides procedures (Section 102) for carrying out the policy. Specifically, section 102(2)(C) of NEPA requires all agencies of the Federal Government to include an environmental statement ''in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment * * *.'' The purpose of this and other requirements is to ensure that environmental information is available to public officials and citizens before Federal agencies make decisions to take actions which could significantly affect the quality of the human environment.

30–50–05 Definitions and Acronyms

A. *CEQ Regulations Definitions.* Definitions that apply to the terms used in this chapter are set forth in the CEQ regulations under 40 CFR part 1508. The terms and the sections of 40 CFR part 1508 in which they are defined follow:

Categorical Exclusion (40 CFR 1508.4)
Cooperating Agency (40 CFR 1508.5)
Cumulative Impact (40 CFR 1508.7)
Effects (40 CFR 1508.8)
Environmental Assessment (EA) (40 CFR 1508.9)
Environmental Document (40 CFR 1508.10)
Environmental Impact Statement (EIS) (40 CFR 1508.11)
Federal Agency (40 CFR 1508.12)
Finding of No Significant Impact (FONSI) (40 CFR 1508.13)
Human Environment (40 CFR 1508.14)
Jurisdiction by Law (40 CFR 1508.15)
Lead Agency (40 CFR 1508.16)
Legislation (40 CFR 1508.17)
Major Federal Action (40 CFR 1508.18)
Mitigation (40 CFR 1508.20)
NEPA Process (40 CFR 1508.21)
Notice of Intent (40 CFR 1508.22)
Proposal (40 CFR 1508.23)
Scope (40 CFR 1508.25)
Significantly (40 CFR 1508.27)

B. *Chapter 30–50 Definitions.* The following terms are defined solely for the purpose of implementing the supplemental procedures provided by this chapter and are not necessarily applicable to any other statutory or regulatory requirements. To the extent that a definition of one of these terms should conflict with a definition in an applicable statute, regulation or Executive Order, that statute, regulation or Executive Order definition shall supersede the GAM definition.

''Department'' means the U.S. Department of Health and Human Services (HHS).

''Pollution Prevention'' includes, but is not limited to, reducing or eliminating hazardous or other polluting inputs, which can contribute to both point and non-point source pollution, modifying manufacturing, maintenance, or other industrial practices; modifying product designs; recycling (especially in-process, closed loop recycling); preventing the disposal and transfer of pollution from one media to another; and increasing energy efficiency and conservation. Pollution prevention can be implemented at any stage—input, use or generation, and treatment—and may involve any technique—process modification, waste stream segregation, inventory control, good housekeeping or best management practices, employee training, recycling, and substitution. Any reasonable mechanism which successfully avoids, prevents, or reduces pollutant discharges or emissions other than by the traditional method of treating pollution at the discharge end of a pipe or stack should, for purposes of this chapter, be considered pollution prevention. (This definition of ''pollution prevention'' has been adopted by CEQ. See Council on Environmental Quality, ''Memorandum to Heads of Federal Departments and Agencies Regarding Pollution Prevention and the National Environmental Policy Act,'' 58 FR 6478 (1993).)

Note: A definition of ''pollution prevention'' that has been developed by the U.S. Environmental Protection Agency is used in Chapters 30–60 through 30–90.

''Responsible official'' means the Secretary, the Departmental decisionmaker designated by the Secretary of Health and Human Services or the Secretary's designated representative, or the Head of an OPDIV/STAFF or the Head of an OPDIV/STAFFDIV, or an official designated by the Head of an OPDIV/STAFFDIV, or the Federal agency official who makes the decision to irreversibly and irretrievably commit the agency's resources to execute the proposed action.

C. *Acronyms:* The following acronyms are used in this chapter:

CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
EA—Environmental Assessment
EIS—Environmental Impact Statement
EPA—Environmental Protection Agency
FONSI—Finding of No Significant Impact
HHS—U.S. Department of Health and Human Services
NEPA—National Environmental Policy Act of 1969
NOI—Notice of Intent
OPDIV—HHS Operating Division
ROD—Record of Decision
STAFFDIV—HHS Staff Division
U.S.C.—United States Code

30–50–10 Applicability

This chapter applies to all organizational elements of HHS. This chapter applies to any HHS action affecting the quality of the environment of the United States, its territories, or possessions. HHS actions having environmental effects outside of the United States, its territories or possessions are subject to the provisions of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), 42 U.S.C. 4321 note. HHS guidelines implementing Executive Order 12114 are located at Section 30–50–75.

30–50–15 Responsibilities

All HHS policies and programs will be planned, developed, and implemented so as to achieve the policies declared by NEPA and required by the CEQ regulations to ensure responsible stewardship of the environment for present and future generations.

Environmental impact consideration is an integral part of HHS's planning and decisionmaking process. For actions initiated by the Department of one of its OPDIVs/STAFFDIVs, the process begins when an issue is identified that requires action under the statutes it administers. The identifying organization also may issue a public call for environmental data or otherwise consult with affected individuals or groups when a contemplated action in which it is or may be involved poses potentially significant environmental impacts.

Assessment of environmental factors continues throughout planning and is integrated with other program planning at the earliest possible time. Assessment of environmental factors includes the identification of the parts of the environment that may be affected by the action, the evaluation of pertinent environmental data, and the consideration of alternatives consistent with 40 CFR 1502.14.

NEPA and the CEQ regulations establish a mechanism for building environmental considerations into federal agency decision-making. This mechanism will be used to incorporate pollution prevention into the early planning stages of a proposal.

OPDIVs/STAFFDIVs shall determine, utilizing the procedures in the CEQ regulations and this chapter, whether any HHS proposal:

1. Is categorically excluded from preparation of an EIS or an EA (30–50–25; 30–20–40);

2. Requires preparation of an EA (30–50–30);

3. Requires preparation of an EIS (30–50–35);

OPDIVs/STAFFDIVs may choose to prepare a NEPA document for any HHS action at any time to further the purposes of NEPA.

OPDIVs/STAFFDIVs shall determine for each major federal action (hereinafter ''action'') not categorically excluded, the data needed for an environmental assessment and a system for acquiring such data. OPDIVs/STAFFDIVs shall prepare an environmental assessment for each proposed action not categorically excluded and, as a result of its findings prepare a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS).

30–50–20 Purpose, Content, and Availability of Environmental Documents

Sections 30–50–40 through 30–50–65 describe the environmental documents that may be required during the process of considering the environmental aspects of an action. These sections describe the various types of NEPA documents including their purposes and contents. OPDIVs/STAFFDIVs may publish in the **Federal Register** additional requirements for the preparation of environmental documents under their responsibility.

Data and information that are protected from disclosure by 18 U.S.C. 1905 or 21 U.S.C. 331(j) or 360j(c) or other applicable laws shall not be included in environmental documents prepared under this chapter. When such data and information are pertinent to the environmental review of a proposed action, an applicant or petitioner shall submit such data and information separately as a confidential section of the application or petition, but shall summarize the confidential data and information in the environmental document to the extent possible.

30–50–25 Actions That May Be Excluded From the Requirement To Prepare an Environmental Assessment or an Environmental Impact Statement

Categorical Exclusions. Actions within a class that individually or cumulatively have been determined under Section 30–20–40 not to significantly affect the quality of the human environment ordinarily are excluded from the preparation of an EA or EIS. To find that a proposed action is categorically excluded, OPDIVs/STAFFDIVs shall determine if:

1. The proposal fits within a class of actions described in 30–20–40 or a categorical exclusion developed by the OPDIV/STAFFDIV in accordance with 30–20–30; and

2. No extraordinary circumstances are related to the proposed action that may affect the significance of the environmental effects of the proposal.

30–50–30 Other Actions Requiring Preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)

Any proposed action of a type specified in this section ordinarily requires the preparation of an EA, unless it qualifies for exclusion under section 30–20–40. Such actions include:

1. Major recommendations or reports made to Congress on proposals for legislation in instances where the Department or OPDIV/STAFFDIV has primary responsibility for the subject matter involved; and

2. Actions Involving Extraordinary Circumstances. As provided by 40 CFR 1508.4, an EA will be required for any specific action that ordinarily is excluded if the OPVID/STAFFDIV has sufficient evidence to establish that the specific proposed action may significantly affect the quality of the human environment. OPDIVs/STAFFDIVs shall prepare an EA when there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Extraordinary circumstances include the following:

(a) Unique situations presented by specific proposals, such as scientific controversy about the environmental effects of the proposal;

(b) Uncertain effects or effects involving unique or unknown risks; or

(c) Unresolved conflicts concerning alternate uses of available resources within the meaning of Section 102(2)(E) of NEPA.

3. Actions Involving Cumulative Impacts. The CEQ regulations require consideration of three types of actions when determining the scope of environmental impact statements. These actions are: (1) Connected actions; (2) cumulative actions; and (3) similar actions. An action may have three types of impacts: (1) direct; (2) indirect; or (3) cumulative. A determination that an action is categorically excluded will be precluded if the action is connected to another action that may require an environmental impact statement or when viewed with other proposed actions may have cumulatively significant impacts. CEQ defines ''connected actions'' and ''cumulative actions'', at 40 CFR 1508.25, as follows:

(a) *Connected Actions.* ''Connected'' actions means actions that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements;

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously; or

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(b) *Cumulative Actions.* ''Cumulative actions'' are actions which, when viewed with other proposed actions, have cumulatively significant impacts and should therefore be discussed in the same impact statement.

30–50–35 Categories of Actions Requiring Preparation of an Environmental Impact Statement (EIS)

EIS's are prepared for HHS organization actions when:

1. Evaluation of data in an Environmental Assessment (EA) leads to a finding by the responsible official that a proposed action may significantly affect the quality of the human environment under the criteria in 40 CFR 1508.14 and 1508.27; or

2. Initial evaluation by the responsible official of any action, including any action for which an EA would otherwise be required, establishes that significant environmental effects may be associated with one or more of the probable courses of action being considered.

30–50–40 Environmental Assessments

A. *Purpose.* As defined by CEQ in 40 CFR 1508.9, an Environmental Assessment (EA) is the public document in which environmental and other pertinent information on a proposed action are presented, providing a basis for a determination whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI).

An EA shall be prepared for each action not excluded pursuant to Section 30–20–40. The EA shall be a complete, objective, and well-balanced document that allows the public to understand the HHS organization's decision.

B. *Contents.* The EA shall:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI;

2. Briefly discuss the need for the proposed action;

3. Describe the potential environmental impacts of the proposed action;

4. Describe measures, including suitable pollution prevention techniques, which would be taken to avoid or mitigate potential environmental impacts associated with the proposed action;

5. Describe in detail the environmental impact of reasonable alternatives to the proposed action (including no action), particularly those that will enhance the quality of the environment and avoid some or all of the adverse environmental effects of the proposed action;

6. Include a comparative analysis of environmental benefits and risks of the proposed action and alternatives, identifying the preferred action based on environmental factors;

7. Include, if appropriate, a floodplain/wetlands assessment prepared under Sections 30–40–40 or

30–40–70 and analyses needed for other environmental determinations;

8. List those persons preparing the assessment and their areas of expertise and persons and agencies consulted; and

9. List complete citations for all referenced documents and include copies of referenced articles that are not generally available.

Consistent with 40 CFR 1500.4(j) and 1502.21, EAs may incorporate by reference information presented in other documents that are reasonably available to HHS and to the public within the time to comment.

OPDIVs/STAFFDIVs may specify formats and additional content of EAs that are required to be prepared for proposed actions within their responsibility. A notice of the availability of OPDIV/STAFFDIV formats and instructions for preparation of environmental assessments shall be published in the **Federal Register**.

C. *Criteria.* In determining whether a proposed action will or will not ''significantly affect the quality of the human environment,'' OPDIVs/STAFFDIVs should evaluate the expected environmental consequences of a proposed action by means of the following steps, utilizing the guidance provided in 40 CFR 1508.27:

Step One—Identify those things that will happen as a result of the proposed action. An action normally produces a number of consequences. For example, a grant to construct a hospital may terminate human services; will involve destruction and construction; will provide a service. Actions may be connected, cumulative, or similar (see 40 CFR 1508.25(a)).

Step Two—Identify the ''human environments'' that the proposed action will affect. In accordance with 40 CFR 1508.27, the significance of an action must be analyzed in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. The significance of an action will vary with the setting of the proposed action. Environments may include terrestrial, aquatic, subterranean, and aerial environments, such as islands, cities, rivers or parts thereof.

Step Three—Identify the kinds of effects that the proposed action will cause on these ''human environments.'' A change occurs when a proposed action causes the ''human environment'' to be different in the future than it would have been, absent the proposed action. These changes involve the introduction of various ''resources'' (including those often characterized as waste).

Example: A decrease in the amount of soil entering a stream; the introduction of a new chemical compound to natural environments.

In addition to organisms, substances, and compounds, the term ''resources'' include energy (in various forms), elements, structures, and systems (such as a trash collection service in a city). Present environmental impacts and reasonably foreseeable future environmental impacts must be considered.

In identifying changes caused by the proposed action, OPDIVs/STAFFDIVs should identify the magnitude of the changes likely to be caused within smaller and larger ''human environments'' affected (e.g., part of a city, the whole city, the metropolitan area).

The impacts resulting from the proposed action may be direct, indirect, or cumulative (see 40 CFR 1508.25(c)).

Step Four—Identify whether these changes are significant. The following points should be considered in conjunction with 40 CFR 1508.8 (effects), 40 CFR 1508.14 (human environment), and 40 CFR 1508.27 (''significantly'') in making a decision concerning significance:

- A change in the characterization of an environment is significant (e.g., from terrestrial to aquatic);
- The establishment of a species in or removal of a species from an environment may be significant;
- The more dependent an environment becomes on external resources, the larger the magnitude of change (and the more likely it is to be significant);
- The larger the environment under consideration, the lower the amount of change needed before the change may be significant.

The CEQ regulations in 40 CFR 1508.27 describe a number of factors that should be considered in evaluating severity (intensity) of an impact. OPCIVs/STAFFDIVs should consider the cumulative effect of the proposed action. An action may be individually insignificant but cumulatively significant when the action is related to other actions. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

Step Five—Consider alternatives to the proposed action. Alternatives to the proposed action include:

- No action alternative;
- Other reasonable courses of action; and
- Mitigation measures.

30–50–45 Findings of No Significant Impact

A. *Purpose.* A Finding of No Significant Impact (FONS) is a document prepared by an OPDIV/STAFF that briefly presents the reasons why an action, no otherwise excluded (see 30–20–40), will not have a significant effect on the human environment and or which, therefore, an EIS will not be prepared (40 CFR 1508.13).

B. *Responsible.* The responsible official will evaluate the information contained in the EA to determine whether it is accurate and objective, whether the proposed action may significantly affect the quality of the human environment, and whether an EIS will be prepared. The responsible official will examine the environmental effects of the proposed action and the alternative courses of action, select a course of action, and ensure that any necessary mitigating measures are implemented as a condition for approving the selected course of action. When the responsible official has determined that the proposed action will not have a significant effect on the human environment, the responsible official will sign the FONSI, thereby establishing that the official approves the conclusion not to prepare an EIS for the action under consideration.

A FONSI shall be prepared only if the related EA supports the finding that the proposed action will not have a significant effect on the quality of the human environment. The environmental assessment (or a summary of the EA) shall be included as a part of the FONSI.

If significant effects requiring the preparation of an EIS are identified, a Notice of Intent (NOI) to prepare an EIS will be published in the **Federal Register** in accordance with § 30–50–55. If an EA does not support a FONSI, an EIS shall be prepared and a Record of Decision (ROD) issued before action is taken on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1.

C. *Contents.* The FONSI shall include the following:

1. The supporting EA or a summary of it (including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, projected impacts);

2. References to any other related environmental documents (40 CFR 1501.7(a)(5));

3. Any mitigation measures that will render the impacts of the proposed action not significant;

4. Any findings required by Sections 30–40–40 or 30–40–70 in connection

with floodplain or wetlands environmental reviews;

5. The date of issuance; and

6. The signature of the approving official.

If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

D. *Proposed Action.* An OPDIV/STAFFDIV may proceed with the proposed action after the FONSI is issued, subject to any mitigation measures identified in the FONSI that are essential to render the impacts of the proposed action not significant.

30–50–50 Public Availability of Environmental Assessments and Findings of No Significant Impact

A. *Public Availability of FONSI and EA.* OPDIVs/STAFFDIVs shall make a FONSI and its related EA available to the public as provided in the CEQ regulation at 40 CFR 1500.6, 1501.4(e)(1) and 1506.6, including making copies available for inspection in public reading rooms or other appropriate locations for a reasonable time.

B. *Public Availability of FONSI.* For a limited number of actions, the proposed FONSI and its related EA will be made available for public review (including review by state and area-wide information clearinghouses) for 30 days before a final determination is made whether to prepare an EIS and before the action may begin. This procedure will be followed when the proposed action is, or is closely similar to, one that normally requires an EIS or when the proposed action is one without precedent (40 CFR 1501.4(e)). OPDIVs/STAFFDIVs may issue a proposed FONSI for public review and comment in other situations as well.

C. *Revised FONSI.* If a FONSI is revised, it is subject to the public availability requirements of this section.

30–50–55 Notice of Intent and Scoping

A. *Purpose.* The Notice of Intent (NOI) notifies the public that an EIS will be prepared and considered (40 CFR 1508.22). This determination may be based on information contained in an EA or on other available information which indicates that potentially significant effects may be associated with a proposed action.

B. *Responsibilities.* When an environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts cannot be eliminated by making changes in the project, an NOI will be published in the **Federal Register** as soon as practicable after the responsible official has made a decision to prepare an EIS and before the scoping process. When the responsible official finds that there will be a lengthy period between the decision to prepare an EIS and the time of actual preparation, the NOI may be published at a reasonable time in advance of preparation of the draft EIS.

C. *Contents.* As required by 40 CFR 1508.22, the NOI will:

1. Describe the proposed action and possible alternatives;

2. Describe the proposed scoping process, which may include a request for information or suggestions regarding the scope of the EIS;

3. State whether a public scoping meeting will be held, and the location, date, and time of such meeting; and

4. State the identification of persons within the HHS organization to contact for information about the proposed action and the EIS.

D. *Scoping.* Publication of the NOI in the **Federal Register** beings the scoping process. Scoping is an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7). The scoping process for an EIS shall be undertaken in accordance with the procedures in 40 CFR 1501.7. An NOI shall be made available to the public in accordance with 40 CFR 1500.6 and 1506.6. OPDIVs/STAFFDIVs shall allow a minimum of 30 days for the receipt of public comments during the scoping process.

E. *Public Scoping Meetings.* A public scoping meeting normally will be conducted whenever an NOI has been published, except that a public scoping process is optional for supplemental EISs (40 CFR 1502.9(c)(4)). Public scoping meetings shall not be held until at least 15 days after public notification. 40 CFR 1506.6(c)(2).

F. *Scoping Issues.* Pollution prevention should be considered an issue in the scoping process because it will encourage those outside the HHS organization to provide insights into pollution prevention technologies that might be available for use in connection with the proposal or its possible alternatives.

30–50–60 Environmental Impact Statements

A. *General.* OPDIV/STAFFDIV responsible for carrying out a specific action is responsible for preparation of an EIS, if one is required. The final text of an EIS will be prepared by the responsible official after comments on the draft statement have been addressed and received full consideration in the OPDIV/STAFFDIV's decision-making process.

B. *Cooperation With Other Federal Agencies.* In cases in which HHS participates with other Federal agencies in a proposed action, one agency will be the lead agency and will supervise preparation of an EIS is one is required. A Memorandum of Understanding among all involved agencies may be useful in summarizing the relative responsibilities of all involved agencies. Lead agency responsibility should be determined in accordance with 40 CFR 1501.5.

HHS will act as a cooperating agency if requested. HHS may request to be designated as a cooperating agency if proposed actions may affect areas of HHS responsibility. As a cooperating agency, HHS will comply with the procedures in 40 CFR 1501.6(b) to the extent possible, depending on program commitments and the availability of funds and personnel.

Within the Department, lead or cooperating agency responsibility will be exercised by the OPDIV/STAFFDIV that is responsible for the subject matter of the proposed action. If a proposed action affects more than one OPDIVs/STAFFDIV, the Secretary will designate one of the OPDIV/STAFFDIVs to be responsible for coordinating the preparation of required environmental documentation.

C. *Cooperation With States.* In cases in which an OPDIV/STAFFDIV participates with state and local governments in a proposed action, the OPDIV/STAFFDIV is responsible for preparing an EIS. However, a state agency may jointly prepare the statement if it has state-wide jurisdiction and HHS participates in its preparation, including soliciting the views of other state or Federal agencies affected by the statement.

D. *Proposals for Legislation.* A legislative EIS must be prepared for any legislative proposal developed by HHS which would significantly affect the quality of the human environment. A legislative EIS shall be submitted to Congress at the time the legislation is proposed to Congress or up to 30 days afterwards. Except as provided in 40 CFR 1506.8, a draft EIS accompany a legislative proposal. A scoping process is not required for a legislative EIS.

E. *Responsibilities.* Except for proposals for legislation, OPDIVs/STAFFDIVs shall prepare EISs in two stages: draft and final. The responsible official will ensure that:

1. All reasonable alternatives (including no action) are rigorously explored and objectively evaluated,

2. There is balancing of environmental impacts with the OPDIV's/STAFFDIV's objective in choosing an appropriate course of action;

3. Appropriate mitigation measures are included in the proposed action or alternatives;

4. Diligent efforts are made to provide an opportunity for the public to participate in the environmental review process;

5. Comments on a draft EIS are carefully assessed and considered; and

6. The preferred alternative is the alternative which the OPDIV/STAFFDIV believes would fulfill its statutory mission and responsibilities giving consideration to economic, environmental, technical and other factors.

F. *OPDIV/STAFFDIV Action.* Except as provided at 40 CFR 1506.1 and 1506.10(b) and this section, no HHS OPDIV/STAFFDIV decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. If the subject of a final statement is also the subject of a regulation published in the **Federal Register**, this requirement may be met by simultaneous publication of the regulation and of a Notice of Availability of the final statement and the Record of Decision, provided that the regulation becomes effective no sooner than 30 days after the date of publication, unless such regulation is subject to formal internal appeal. For regulations subject to formal internal appeal, the period for formal appeal of the decision and the 30 day period may run concurrently.

G. *Record of Decision.* A Record of Decision (ROD) shall be prepared by the responsible official when an HHS organization decides to take action on a proposal covered by an EIS. See 40 CFR 1505.2. No action shall be taken until the decision has been made public, except as provided at 40 CFR 1500.6 and 1506.1. The contents of a ROD are specified in 30–50–65. (See further discussion in 30–50–65)

H. *Emergency Actions.* There are certain HHS organization actions which, because of their immediate importance to the public health, make adherence to the requirements of the CEQ regulations and this section concerning minimum periods of public review impractical. Compliance with the requirements for environmental analysis under NEPA is impossible where emergency circumstances require immediate action to safeguard the public health. For such actions, the responsible official shall consult with the CEQ about alternative arrangements before the action is taken, or after the action is taken if time does not permit prior consultation with CEQ. OPDIVs/STAFFDIVs shall, in accordance with 40 CFR 1506.11, limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. An OPDIV/STAFFDIV shall document, including publishing a notice in the **Federal Register**, an emergency action covered by this paragraph within 30 days after such action occurs. The documentation shall identify any adverse impacts from the actions taken; further mitigation that is necessary; and any NEPA documents that may be required.

I. *Monitoring.* As described in 40 CFR 1505.3, an OPDIVSTAFFDIV may provide for monitoring to ensure that its decisions, any mitigating measures, and other conditions are carried out.

30–50–65 Contents of an EIS

A. *Format.* The format used for an EIS shall encourage good analysis and clear presentation of the proposed action, alternatives to the proposed action, their environmental effects and, when there is an interrelationship between economic or social and natural or physical environmental effects, their economic, and social impacts. See 40 CFR 1508.14. The CEQ regulations (40 CFR part 1502) provide detailed requirements for the preparation of an EIS.

The following CEQ recommended standard format for EIS's (40 CFR 1502.10) shall be used unless the responsible official determines that there is a compelling reason to do otherwise:

1. Cover Sheet;
2. Summary;
3. Table of Contents;
4. Purpose of and need for action;
5. Alternatives including proposed action;
6. Affected environment;
7. Environmental consequences;
8. List of preparers;
9. List of Agencies, organizations, and persons to whom copies of the EIS are sent;
10. Index; and
11. Appendices (if any).

If a different format is used, it shall include paragraphs 1–3, 8–10, and shall include the substance of paragraphs 4–7 and 11, in any appropriate format.

B. *Cultural or Natural Assets.* If a proposed action will also affect a cultural or natural asset, the EIS shall incorporate the material required by the applicable statute or Executive Order.

C. *Pollution Prevention.* Pollution prevention should be an important component of mitigation of the adverse impacts of a Federal action. To the extent practicable, pollution prevention considerations should be included in the proposed action and in the reasonable alternatives to the proposal, and should be addressed in the environmental consequences section of the EIS (40 CFR 1502.14(f), 1502.16(h), and 1508.20).

D. *Draft EIS.* Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process and shall satisfy to the fullest extent possible the requirements established for final EISs. All substantive comments received during the comment period held as part of the public scoping process shall be considered in determining the scope of the EIS. The draft statement should discuss all major points of view on the environmental impacts of the alternatives, including the proposed action.

E. *Final EIS.* A final EIS shall be prepared following the public comment period and hearing on the draft EIS. The HHS organization's responses to comments shall be made in accordance with 40 CFR 1503.4. A final EIS shall contain any additional relevant information gathered after the publication of the draft EIS, a copy of or a summary of oral and written comments received during the public review of the draft EIS, and the HHS organization's responses to the comments. Any responsible opposing view that was not adequately discussed in the draft statement shall be addressed in the final EIS. A final EIS shall also include any mitigation measures necessary to make the recommended alternative environmentally acceptable and any findings required by Sections 30–40–40 or 30–40–70 in connection with floodplain or wetlands environmental reviews.

F. *Consideration of Comments on the Draft EIS.* Comments received on the draft EIS shall be carefully assessed and considered. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided by 40 CFR 1503.4.

G. *Supplemental Statement.* OPDIVs/STAFFDIVs shall prepare supplements to either draft or final statements if there are substantial changes in the proposed action which are relevant to environmental concerns bearing on the proposed action, if significant new information becomes available, or new circumstances occur. Preparation and circulation of supplements is the same as that for draft and final EISs.

H. *Record of Decision.* When an OPDIV/STAFFDIV reaches a decision

on a proposed action after preparing an EIS, the responsible official shall prepare a concise public record of decision which includes:

1. The decision;

2. All alternatives considered, specifying the alternative or alternatives which were considered to be environmentally preferable;

3. A discussion of factors which were involved in the decision, including any essential considerations of national policy which were balanced by the organization in making its decision and a statement of how those considerations entered into its decision;

4. A statement of whether all practicable means to avoid or minimize potential environmental harm from the alternative selected have been adopted, and if not, why they were not;

5. A description of mitigation measures that will be undertaken to make the selected alternative environmentally acceptable;

6. A discussion of the extent to which pollution prevention is included in the decision and how pollution prevention measures will be implemented; and

7. A summary of any monitoring and enforcement program adopted for any mitigation measures.

30–50–70 Public involvement and Circulation of Environmental Impact Statements

A. *Public Notice.* The public has the opportunity to offer comments and otherwise participate in the NEPA process as set forth in 40 CFR 1506.6 from the time the decision is made to prepare an EIS. A Notice of Intent (30–50–55) to prepare an EIS is published in the **Federal Register** and serves as the first public notification that an EIS will be prepared. The scoping process (30–50–55), as announced in the Notice of Intent, allows the public, Indian tribes, Federal agencies, States, and local governments to participate in determining the issues to be considered in the EIS.

OPDIVs/STAFFDIVs shall make diligent efforts to involve the public in the environmental review process by providing public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. The responsible official shall ensure that public notice is provided for in accordance with 40 CFR 1500.6 and 1506.6(b). Notice shall be made through direct mail, the **Federal Register,** local media, or other means appropriate to the scope, issues, and extent of public concern. In all cases, notice shall be given to those who have requested it on an individual action. Public notice shall include the name and location of a contact official through whom additional material may be obtained. EPA will publish in the **Federal Register** a Notice of Availability of HHS draft and final EISs.

OPDIVs/STAFFDIVs must give public notice in the following instances:

1. Prior to preparing a draft statement in order to solicit public participation; and

2. Prior to any public hearings.

B. *Public Hearings.* OPDIVs/STAFFDIVs shall hold public hearings as part of the NEPA environmental review process when hearings will assist substantially in forming environmental judgments. The hearings shall be conducted in a manner that is consistent with OPDIV/STAFFDIV program requirements. The responsible official shall conduct a public hearing on a draft EIS and shall ensure that the draft EIS is made available to the public and the hearing announced at least 15 days in advance of the hearing. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public hearing.

C. *Availability of Draft EIS.* Draft EISs will be prepared, forwarded to EPA for filing, and made available to the public early enough in the consideration of the proposed action to permit meaningful review of the environmental issues involved. A draft EIS will be sent to any party having an interest in the document, and will be available to the public upon request for the purpose of receiving substantive comment, corrections, and additional information on the issues covered by the statement. Copies of draft statements shall be provided to:

1. U.S. Environmental Protection Agency;

2. Council on Environmental Quality;

3. Other Federal agencies having related special expertise or jurisdiction by law;

4. Appropriate local and national organizations;

5. Appropriate State and local agencies; including those authorized to develop and enforce environmental standards;

6. Indian tribes, as appropriate, and

7. Others requesting a copy of the draft statement.

D. *Comments on Draft EIS.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, Indian tribes, State and local government agencies, and the public in accordance with 40 CFR 1503.1. The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4. There shall be a 45-day minimum comment period for a draft EIS after EPA publishes a Notice of Availability of the document in the **Federal Register** (40 CFR 1506.10(c)). Procedures for the preparation and circulation of a supplemental statement are contained in 30–50–65G.

E. *Proposed Rulemaking.* If the subject of a draft EIS is also the subject of a notice of proposed rulemaking, the **Federal Register** notice of proposed rulemaking will state that the draft EIS is available upon request, and will solicit comments from all interested persons.

F. *Final EIS.* Copies of final statements shall be provided in accordance with the list in subsection C and to all agencies, persons, or organizations who submitted comments regarding the draft statement. Copies of each final EIS will be available upon request, and the responsible HHS organization will make copies of the final statement available for public inspection in public reading room(s).

G. *Record of Decision.* The responsible official shall publish the ROD in the **Federal Register** and disseminate the ROD to the public as provided in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c).

30–50–70 Environmental Effects Abroad of Major Agency Actions

A. *Consideration of Environmental Effects.* In accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (1979), 42 U.S.C. 4321 note, the responsible official shall consider the environmental effects abroad of a major action by the Department or one of its OPDIVs/STAFFDIVs, including whether the action involves:

1. Potential environmental effects on the global commons and areas outside the jurisdiction of any nation, e.g., oceans, Antarctica, and the upper atmosphere;

2. Potential environmental effects on a foreign nation not participating with or otherwise involved with the United States and not otherwise involved in an HHS organization activity;

3. The export of products (or emissions or effluent) that in the United States are prohibited or strictly regulated because their effects on the environment create a serious public health risk; or

4. Potential environmental effects on natural and ecological resources of global importance designated under the Executive Order.

Before deciding on any action falling into the categories specified in

subsection A of this section, the responsible official shall determine in accordance with Section 2–3 of the Executive Order whether such actions may have a significant environmental effect abroad.

B. *Type of Environmental Review.* If the responsible official determines that an action may have a significant environmental effect abroad, the responsible official shall determine in accordance with Section 2–4(a) and (b) of the Executive Order whether the subject action calls for:

1. An EIS;

2. A bilateral or multilateral environmental study; or

3. A concise environmental review.

C. *Preparation of Environmental Documents.* In preparing environmental documents under this section, the responsible official shall:

1. Determine, as provided in Section 2–5 of the Executive Order, whether proposed actions are subject to the exemptions, exclusions, and modification in contents, timing, and availability of documents; and

2. Coordinate all communications with foreign governments concerning environmental agreements and other arrangements in implementing the Executive Order.

30–50–80 Reviewing External Environmental Impact Statements

HHS has a responsibility under section 102(2)C of NEPA to review and comment on draft EISs developed by other Federal agencies. In accordance with 40 CFR 1503.2, HHS must comment on each EIS on issues for which it has ''jurisdiction by law or special expertise.''

A. *Jurisidction by Law.* An OPDIV/STAFFDIV reviewing a draft EIS should review each alternative action discussed in an EIS in terms of the Departments statutory responsibilities. For example, the reviewer should examine:

1. Potential effects on the delivery or quality of health, social, or welfare services;

2. Potential effects associated with the manufacture, transportation, use, storage, and disposal of chemicals or other hazardous or radioactive materials;

3. Potential changes in plant or animal populations. (This includes examination of the potential effects the proposed action may have on human health. Changes in natural predator populations may upset the ecological balance to the extent that an increased incidence of morbidity or mortality will occur unless offsetting safeguards are instituted); and

4. Potential changes in the physical environment that could affect human health or welfare (e.g., air pollution, change in land use). (This shall also include an examination of the availability and quality of water, sewage, and solid waste disposal facilities.)

B. *Jurisdiction by Special Expertise.* Individuals reviewing EISs may comment, in addition, in areas beyond their immediate job responsibilities when they have special expertise which may be appropriate. For example, a veterinarian employed in a disease prevention program can comment on an EIS discussion about the effects of a forestry project on animal populations.

C. *Types of Comments.* Comments on an EIS or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both. A reviewer's comment on an external EIS can address one or more of the following:

1. That data are missing or inaccurate;

2. That the organization of the EIS precludes a valid review;

3. That the projections or descriptions of effects are not complete or are inaccurate;

4. That the reviewer does not concur with the projections (stating reasons);

5. That certain safeguards will lessen the extent of an effect or the magnitude of an impact;

6. A preference for an action alternative (or no action); or

7. An objection to a federal agency's preferred alternative (if one is identified in the draft EIS) and recommend adoption of new or existing alternatives.

Objections to a federal agency's alternative should be lodged on the basis of the direct or indirect effects on HHS programs or mission. When an objection or reservation about the proposal is made on grounds of environmental impacts, an OPDIV/STAFFDIV shall specify the mitigation measures it considers necessary to allow it to grant or approve applicable permit, license, or related requirements or concurrences (40 CFR 1503.3).

If a lead federal agency's predictive methodology is criticized, the OPDIV/STAFFDIV should describe the alternative methodology which it prefers and the rationale for its preference. An OPDIV/STAFFDIV shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, an OPDIV/STAFFDIV shall specify any additional information it needs to comment adequately on the draft statements analysis of significant site-specific effects associated with the granting or approving of necessary Federal permits, licenses, or entitlements.

D. *Resolution of Comments.* If an OPDIV/STAFFDIV objects to all or part of a Federal agency's proposed action and, after consultation with the agency, is unable to resolve its differences, it shall determine if the proposed action meets the criteria for referral in 40 CFR 1504.2. If the criteria are met, the OPDIV/STAFFDIV head shall refer the objection to CEQ within 25 days of the date that the final EIS is made available to EPA in accordance with 40 CFR 1504.3.

HHS Chapter 30–60—General Administration Manual; HHS Transmittal 98.2

Subject: Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) Requirements

30–60–00	Background
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30	Notification of Release of Extremely Hazardous Substance
40	Material Safety Data Sheet Reporting
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70	Toxic Chemical Release Inventory Reporting
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30–60–00 Background

EPCRA was enacted in 1986 as Title III of the Superfund Amendments and Reauthorization Act (SARA), Pub. L. No. 99–499, 100 Stat. 1729 (codified at 42 U.S.C. 11001–11050(1988)). Although they are sometimes connected by their emergency notification and reporting requirements, EPCRA is a separate act from the ''Superfund'' law or, as it is officially titled, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EPCRA's provisions form two primary programs: (1) emergency planning, and (2) community right-to-know. EPCRA establishes a mechanism for providing the public with important information on the hazardous and toxic chemicals in their communities, and it creates emergency planning and notification requirements to protect the public in the

event of a release of extremely hazardous substances. The law requires local communities to prepare plans for dealing with emergencies relating to the release of extremely hazardous substances from facilities within those communities. EPCRA also provides the public and local and state governments with the right to obtain information concerning the types, amount, location, storage, use, disposition, and possible health effects from the release of hazardous and extremely hazardous substances from facilities that are in their communities.

Facilities that are subject to EPCRA are required to provide information and reports to EPA and state and local groups. Five distinct reporting requirements are contained in EPCRA:

1. Emergency planning (30–60–20);
2. Notification of release (30–60–30);
3. Material safety data sheet submission (30–60–40);
4. Emergency and hazardous chemical inventory reporting (30–60–50), and
5. Toxic chemical release reports (30–60–70).

Each of these reporting requirements and other facility responsibilities are described in the following sections.

30–60–05 Applicability

A. *Executive Order 12856.* EPCRA applies to ''persons''. The term ''person'' is defined in the act to include individuals, partnerships, corporations, states, and municipalities. The definition does not cover most United States government agencies. EPCRA is made applicable to federal agencies by Executive Order 12856. E.O. 12856 incorporates by reference all definitions found in EPCRA and EPA implementing regulations, except that it modifies the term ''person'' to include Federal executive agencies as defined in 5 U.S.C. 105 (1988). Executive agencies are Executive Departments, government corporations, and independent establishments of the United States. HHS is an Executive Department and is subject to EPCRA because of Executive Order 12856.

B. *Agency Facilities.* Executive Order 12856 provides that EPCRA applies to all Federal executive agencies that either own or operate a ''facility'' as that term is defined in EPCRA, if such facility meets the statute's threshold requirements for compliance. The statutory definition of facility is:

All buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of [emergency release notification], the term includes motor vehicles, rolling stock, and aircraft (42 U.S.C. 11049(4)).

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 3550.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

C. *Covered Facilities.* Each Federal agency must apply all of the provisions of Executive Order 12856 to each of its covered facilities, including those facilities which are subject, independent of the Executive order, to the provisions of EPCRA (e.g., certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds). Executive Order 12856 does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad. EPA may be consulted to determine the applicability of Executive Order 12586 to particular OPDIV/STAFFDIV facilities.

D. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the EPA Administrator by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA.

30–60–10 Responsibilities

A. *HHS.* Executive Order 12856 makes the Secretary responsible for ensuring HHS compliance with emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA. The Order requires Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification. The objective of Executive Order 12856 is to make the Federal Government a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals.

B. *OPDIVs/STAFFDIVs.* The head of each OPDIV/STAFFDIV is responsible for compliance with the provisions of EPCRA as described in this chapter and Executive Order 12856. An OPDIV/STAFFDIV must comply with provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Dates for compliance with individual sections of EPCRA vary and are set forth in the appropriate sections below. Executive Order 12856 provides that the compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables. Compliance with EPCRA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

C. *Agency Contractors.* Executive Order 12856 requires each Federal agency to provide, in all appropriate future contracts, for the contractor to supply all information the Federal agency deems necessary for it to comply with the order. To the extent that compliance with the Executive Order is made more difficult due to lack of information from existing contractors, OPDIVs/STAFFDIVs must take practical steps to obtain the information needed to comply with the Executive Order from such contractors. Nothing in Executive Order 12856 alters the obligations which GOCO's and Government corporation facilities have under EPCRA independent of the Executive Order or subjects such facilities to EPCRA if they are otherwise excluded. However, each OPDIV/STAFFDIV shall include the releases and transfers from all such facilities when meeting all of the organization's responsibilities under Executive Order 12856.

30–60–20 Emergency Planning (EPCRA §§ 301–30; 42 U.S.C. 11001–30)

A. *Basic Requirement.* Facilities that are covered by EPCRA must notify the State emergency response commission that they are subject to the Act's emergency planning provisions. A local emergency planning committee, comprised of state and local officials, community organizations, and facility representatives, must prepare an emergency plan for responding to the release of extremely hazardous substances in the local community. A covered facility must provide any information that is necessary for developing the local emergency plan.

The facility must also notify the local committee of relevant changes at the facility that may affect the emergency plan and designate an emergency planning coordinator who will participate in the emergency planning process. EPA regulations governing emergency planning and notification under EPCRA are contained in 40 CFR part 355.

B. *Applicability of Requirement.* A facility is subject to the EPCRA emergency planning requirements if an amount of any extremely hazardous substance equal to or in excess of the threshold planning quantity (TPQ) established for that substance is present at the facility. An ''amount of an extremely hazardous substance'' means the total amount of an extremely hazardous substance present at any one time at a facility at concentrations greater than one percent by weight, regardless of location, number of containers, or method of storage.

E.O. 12856 makes the EPCRA emergency planning requirements in Sections 302 and 303 of the Act applicable to Federal agencies. A Governor or a State commission may designate additional facilities in the State which shall be subject to the EPCRA emergency planning requirements. The authority of a Governor or a State commission to designate additional facilities does not extend to Federal executive agencies (except government corporations).

C. *Extremely Hazardous Substances and Threshold Planning Quantities.* An ''extremely hazardous substance'' is defined in EPA regulations to mean a substance that is listed in Appendices A (in alphabetical order) and B (by CAS number) of 40 CFR part 355. The Appendices contain tables which indicate the threshold planning quantity (TPQ) for each extremely hazardous substance.

EPCRA authorizes EPA to modify the list and TPQ of extremely hazardous substances from time to time based on the toxicity, reactivity, volatility, dispersability, combustibility, and flammability of a substance. Because extremely hazardous substances are periodically removed or added to the list, and threshold quantities may be revised, facilities must be sure that the list of extremely hazardous substances they consult is current. EPA regulations in 40 CFR 355.30(e) (1992) set forth the rules and techniques for calculating the TPQ of extremely hazardous substances that are solids or present in mixtures, solutions, and molten materials.

D. *State and Local Planning Groups.* EPCRA requires the Governor of each State or Chief Executive Officer of an Indian Tribe to appoint an Emergency Response Commission (''commission''). The commission must designate emergency planning districts in order to facilitate preparation and implementation of an emergency plan. The commission must also appoint local emergency planning committees (''committee'') in each emergency planning district and supervise and coordinate the activities of such committees.

Local committees include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to EPCAR.

E. *Local Emergency Plan.* Each local emergency planning committee was to have completed preparation of a local emergency plan not later than October 17, 1988. The committee must review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require. The rules of committee must include provisions for public notification of committee activities, public meetings to discuss the emergency plan developed by the committee, public comments on the emergency plan and response to such comments by the committee, and distribution of the emergency plan. EPCRA requires that each local emergency plan prepared by a local committee shall include (but is not limited to) each of the following:

1. Identification of facilities subject to the EPCRA's requirements that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to EPCRA requirements, such as hospitals or natural gas facilities.

2. Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances;

3. Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan;

4. Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of EPCRA Section 11004);

5. Methods for determining the occurrence of a release, and the area or population likely to be affected by such release;

6. A description of emergency equipment and facilities in the community and at each facility in the community subject to EPCRA requirements, and an identification of the person responsible for such equipment and facilities;

7. Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

8. Training programs, including schedules for training of local emergency response and medical personnel; and

9. Methods and schedules for exercising the emergency plan.

F. *Review of Emergency Plans.* After completion of an emergency plan for an emergency planning district, the local emergency planning committee must submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission must review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts.

Regional response teams, as established pursuant to CERCLA's National Contingency Plan (42 U.S.C. 9605), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review may not delay implementation of the plan. The national response team must publish guidance documents for preparation and implementation of emergency plans.

G. *Emergency Planning Notification.* Each covered facility small notify the commission for the state in which the facility is located that the facility is subject to EPCRA emergency planning requirements.

Thereafter, if a substance on the list of extremely hazardous substances first becomes present at the facility in excess of the TPQ established for such substance, or if there is a revision of the list of extremely hazardous substances and the facility has present a substance on the revised list in excess of the TPQ established for such substance, the covered facility shall notify the state emergency response commission and

the local emergency planning committee within 60 days after such acquisition or revision that the facility is subject to the EPCRA emergency planning requirements. (EPCRA, § 302(c)).

H. *Facility Emergency Response Coordinator.* A facility representative shall be designated for each facility who will participate in the local emergency planning process as a facility emergency response coordinator. The name of the facility emergency response coordinator shall be provided to the local emergency planning committee of the State (or the Governor if there is no committee) in which the facility is located.

I. *Provision of Information and Technical Assistance*

1. *Provision of Information.* Upon request of the local committee, the facility must promptly provide to the committee any information necessary for development or implementation of the local emergency plan. Executive Order 12856 provides that all information necessary for the applicable local committee to prepare or revise the local emergency plan must also be provided. A covered facility shall inform the local emergency planning committee of any changes occurring at the facility which may be relevant to emergency planning.

EPCRA section 322 (42 U.S.C. 11042) provides for the withholding of certain trade secret information, provided the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

2. *Technical Assistance.* OPDIVs/STAFFDIVs, to the extent practicable, shall provide technical assistance, if requested, to local emergency planning committees in the development of emergency plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

30–60–30 Notification of Release of Extremely Hazardous Substance (EPCRA § 304; 42 U.S.C. 11004)

A. *Basic Requirement.* A facility must immediately notify the local committee for any area likely to be affected, and the commission of any state likely to be affected, of all-site spills or any releases from the facility of a ''reportable quantity'' (RQ) of an EPCRA ''extremely hazardous substance'' or a CERCLA ''hazardous substance''. The initial report must be made by such means as telephone, radio, or in person. A follow-up written report must be furnished to the committee and commission. EPA regulations governing notification of release of an extremely hazardous substance are contained in 40 CFR Part 355.

B. *Applicability.* The EPCRA emergency release notification requirements apply to any facility:

1. At which a hazardous chemical is produced, used, or stored; and

2. At which there is release of a reportable quantity of any extremely hazardous substances or CERCLA hazardous substance.

Executive Order 12856 provides that the release notification requirements in EPCRA section 304 (42 U.S.C. 11004) shall be effective beginning January 1, 1994.

OPDIVs/STAFFDIVs should be aware that the release notification requirements of EPCRA section 304 covers more facilities than the emergency planning requirements of EPCRA sections 301–303. An OPDIV/STAFFDIV facility must notify the local emergency planning committee of a release under section 304 even if a section 302(b) ''threshold planning quantity'' of a substance is not present. Furthermore, section 304 is the only section of EPCRA that applies to ''transportation facilities.''

C. *Reportable Quantities.* EPA regulations in 40 CFR part 355 establish the list of extremely hazardous substances, threshold planning quantities, and facility notification responsibilities necessary for the development and implementation of state and local emergency response plans. The reportable quantities for extremely hazardous substances are set out in 40 CFR part 355, Appendices A (alphabetical order) and B (by CAS number).

D. *CERCLA Release Reporting.* The EPCRA notification of release requirements are in addition to the release reporting requirements imposed by CERCLA section 103 (42 U.S.C. 9603). Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its reportable quantity must immediately notify the National Response Center of the release. The purpose of the CERCLA notification requirement is to inform the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely manner. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

Releases of CERCLA hazardous substances are subject to the release reporting requirements that are codified at 40 CFR part 302. The list of CERCLA hazardous substances and their reportable quantities is found at 40 CFR 302.4. The National Response Center telephone number for release reporting is (800) 424–8802.

Note: Currently, only releases of those extremely hazardous substances that are also CERCLA hazardous substances are required to be reported to the National Response Center under CERCLA section 103. Discrepancies exist between the substances on the list of EPCRA extremely hazardous substances and those on the list of CERCLA hazardous substances. Moreover, the reportable quantity of the same substance may differ between lists. EPA has published a proposed rule to designate 226 non-CERCLA extremely hazardous substances as CERCLA hazardous substances (54 FR 3388 (1989)). The purpose of the proposed rule is to eliminate potential confusion concerning the different EPCRA (notification to state and local officials only) and CERCLA (notification to the National Response Center in addition to notification to state and local officials) requirements. EPA has also published a proposed rule to adjust the reportable quantities for 225 substances on the EPCRA extremely hazardous substances list, which EPA has proposed for designation as CERCLA hazardous substances, and 19 substances that are CERCLA hazardous substances (54 FR 35988 (1989)).

E. *Comparison of EPCRA and CERCLA Release Reporting Requirements.* Table 1 indicates the differences in reporting a release of a reportable quantity of a CERCLA hazardous substance or an EPCRA extremely hazardous substance.

Note: A petroleum release that contains a reportable quantity of an extremely hazardous substance as a constituent is exempt under CERCLA but not under EPCRA section 304. The petroleum exclusion under CERCLA does not apply to EPCRA (52 FR 13378, 13385 (1987)).

TABLE 1.—COMPARISON OF CERCLA AND EPCRA RELEASE NOTIFICATION REQUIREMENTS

Reporting requirement	Substance only on CERCLA list of hazardous substances (40 CFR 302.4)	Substance only on EPCRA list of extremely hazardous substances (40 CFR Part 355, Appx A & B)	Substance on CERCLA and EPCRA lists
Notify State and Local Officials	Yes	Yes (unless release results in exposure only to persons solely within the boundaries of the facility).	Yes
Notify National Response Center	Yes	No	Yes
Does the petroleum exclusion apply?	Yes	No	Yes—CERCLA Report No—EPCRA Report

F. *Notice Requirements.* A facility shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the state emergency response commission of any state likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided to relevant local emergency response personnel.

Emergency release notice requirements for a transportation-related release may be satisfied by providing the information indicated in subsection G. *Notice Contents* by telephone to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. A ''transportation-related release'' means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.

G. *Notice Contents.* The emergency release notice shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

1. The chemical name or identity of any substance involved in the release.

2. An indication of whether the substance is an extremely hazardous substance.

3. An estimate of the quantity of any such substance that was released into the environment.

4. The time and duration of the release.

5. The medium or media into which the release occurred.

6. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

7. Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

8. The names and telephone number of the person or persons to be contacted for further information.

H. *Following Emergency Notice.* As soon as practicable after a release which requires notice under subsection F. *Notice Requirements,* a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required in subsection G. *Notice Contents* and including additional information with respect to:

1. Actions taken to respond to and contain the release;

2. Any known or anticipated acute or chronic health risks associated with the release; and

3. Where appropriate, advice regarding medical attention necessary for exposed individuals.

I. *Transportation Exemption Not Applicable.* EPCRA generally exempts from its requirements the transportation, including the storage incident to such transportation, of any substance or chemical subject to EPCRA. This transportation exemption does not apply to this section (30–60–30) or EPCRA's requirements for notification of the release of an extremely hazardous substance (EPCRA § 304; 42 U.S.C. 11004).

Refer to subsection F. *Notice Requirements* for requirements pertaining to transportation-related releases.

J. *Exempted Releases.* The notification requirements of this section (30–60–30) do not apply to:

1. Any release which results in exposure to persons solely within the boundaries of the facility. (**Note:** CERCLA does not contain a similar exemption);

2. Any release which is a ''Federally permitted release'' as defined in section 101 (10) of CERCLA (42 U.S.C. 9601 (10));

3. Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b).* Exemption from notification under this subsection does not include exemption from:

(a) Initial telephone or written notifications of a continuous release as defined in 40 CFR 302.8(d) and (e);

(b) Notification of a ''statistically significant increase,'' defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release;

(c) Notification of a ''new release'', defined in 40 CFR 302.8(g)(1) as any change in the composition or source(s) of the release; or

(d) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).

*The referenced definitions that apply to the notification of a continuous release state: ''A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent and incidental to normal operations or treatment processes * * *. A routine release is a release that occurs during normal operating procedures or processes * * *. A release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission.'' (40 CFR 302.8(b)).

**''The normal range of a release is all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the preceding year. Only releases that are both continuous and stable in quantity and rate may be included in the normal range.'' (40 CFR 302.8(b)).

4. Any release of a pesticide product exempt from CERCLA section 103(a) (42 U.S.C. 9603(a)) reporting under CERCLA section 103(e) (42 U.S.C. 9603(e)) (CERCLA exempts from its notification requirements the application of a pesticide product registered under FIFRA or the handling and storage of such a pesticide product by an agricultural producer);

5. Any release not meeting the definition of release under section 101 (22) of CERCLA (42 U.S.C. 9601(22)), and therefore exempt from CERCLA

section 103(a) reporting (42 U.S.C. 9603(a)) (e.g., engine exhaust emissions, certain nuclear material releases, the normal application of fertilizer); and

6. Any radionuclide release which occurs:

(a) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land;

(b) Naturally from the disturbance of land for purposes other than mining, such as for agricultural or construction activities;

(c) From the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and

(d) From coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

30–60–40 Material Safety Data Sheet Reporting (EPCRA § 311; 42 U.S.C. 11021)

A. *Basic Requirement.* A material safety data sheet (MSDS) or a list of hazardous chemicals shall be provided to the local emergency planning committee, the State emergency planning commission, and the fire department with jurisdiction over the facility for each hazardous chemical present at the facility according to the minimum threshold schedule provided in 40 CFR 370.20(b) (see subsection D. *Minimum Thresholds for Reporting*). An MSDS must include such information as the hazardous chemical's common and chemical names, physical and chemical characteristics, physical and health hazards, primary routes of entry, exposure limits, possible carcinogenic effects, safe handling and use precautions, control measures, and emergency and first aid procedures (29 CFR 1910.1200(g)(2)). EPA regulations governing MSDS reporting are contained in 40 CFR part 370.

Note: Requirements for the reporting of mixtures is contained in section 30–60–60.

B. *Applicability.* The requirement in section 311 of EPCRA to submit a MSDS or list of hazardous chemicals applies to each facility that is required to prepare or have available a MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act (see 29 CFR 1910.1200(g)). The Act requires a facility to have a MSDS for each hazardous chemical it uses, produces or imports (29 CFR 1910.1200(g)(1)).

C. *Alternative Reporting.* In lieu of the submission of an MSDS for each hazardous chemical, the following may be submitted:

1. A list of the hazardous chemicals for which an MSDS is required, grouped by hazard category as defined by 40 CFR 370.2 (e.g., ''immediate (acute) health hazard'' or ''delayed (chronic) health hazard'');

2. The chemical or common name of each hazardous chemical as provided on the MSDS; and

3. Except for reporting of mixtures under 40 CFR 370.28(a)(2) (see section 30–60–60, subsection A.2.), any hazardous component of each hazardous chemical as provided on the MSDS.

D. *Minimum Threshold Levels for MSDS Reporting.* Except in response to certain requests for submission of an MSDS, an MSDS shall be submitted:

1. For all hazardous chemicals present at the facility at any one time in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.); and

2. For all extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs. approximately 55 gallons) of the TPQ, whichever is lower.

The minimum threshold for reporting in response to a request for submission of an MSDS by a local emergency planning committee (see subsection H. *Submission of MSDS Upon Committee Request*) shall be zero.

E. *Definition of ''Hazardous Chemical''.* The term ''hazardous chemical'', as defined in 29 CFR 1910.1200(c), means any chemical which is a physical hazard or a health hazard, except that such term does not include the following substances:

1. Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

2. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

3. Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

4. Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

5. Any substance to the extent it is used in routing agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Note: The definition of ''hazardous chemical'' in this section (30–60–40) is broader than ''hazardous substance'' under CERCLA or ''extremely hazardous substance'' under EPCRA (see sections 30–60–20, 30–60–30).

F. *Reporting Period.* Executive Order 12856 provides that to the extent that a facility is required to maintain MSDSs under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than August 3, 1994. Thereafter, a facility shall submit an MSDS for a hazardous chemical or a list within three months after a hazardous chemical requiring an MSDS becomes present in an amount exceeding the threshold established in 40 CFR 370.20(b) (see subsection D. *Minimum Threshold Levels for Reporting*).

G. *Supplemental Reporting.* A revised MSDS shall be provided to the local emergency planning committee, the State emergency planning commission, and the fire department with jurisdiction over the facility within three months after discovery of significant new information concerning the hazardous chemical for which the MSDS was submitted.

H. *Submission of MSDS Upon Committee Request.* A facility that has not submitted the MSDS for a hazardous chemical present at the facility shall submit the MSDS for any such hazardous chemical to the local emergency planning committee upon its request. The MSDS shall be submitted within 30 days of the receipt of such request. The minimum threshold for reporting in response to a request for submission of an MSDS by a local committee shall be zero.

I. *Public Request for MSDS Information.* EPA regulations permit any person to obtain an MSDS with respect to a specific facility by submitting a written request to the local emergency planning committee. If the committee does not have the MSDS in its possession, the EPA regulations authorize the committee to request a submission of the MSDS from the owner or operator of the facility that is the subject of the request and make the sheet available to the requester.

J. *Withholding of Trade Secret Information.* EPCRA section 322 (42 U.S.C. 11042) provides that any person may withhold from the submittal of an MSDS the specific chemical identity (including the chemical name and other specific identification) of a hazardous chemical when such information is a trade secret and the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

30–60–50 Emergency and Hazardous Chemical Inventory Reporting (EPCRA § 312; 42 U.S.C. § 1022)

A. *Basic Requirement.* A facility shall submit annually an Emergency and Hazardous Chemical Inventory

Reporting Inventory Form (Tier I form) to the local emergency planning committee, the State emergency response commission, and the fire department with jurisdiction over the facility for hazardous chemicals present at the facility during the preceding calendar year that are above the minimum threshold levels established for those chemicals (see subsection D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting*). The Tier I form provides aggregate information on the categories, amounts, and general location of the hazardous chemicals at the facility. EPA regulations governing annual inventory reporting are contained in 40 CFR part 370.

Note: Requirements for the reporting of mixtures is contained in section 30–60–60.

B. *Alternative Reporting.* With respect to any specific hazardous chemical at the facility, a Tier II form (see subsection G. *Contents of Tier II Form*) may be submitted in lieu of the Tier I information.

C. *Applicability of the Requirement.* The requirement in section 312 of EPCRA to submit an emergency and hazardous chemical inventory form applies to each facility that is required to prepare or have available an MSDS for a hazardous chemical under OSHA and regulations promulgated under that Act. OSHA requires facilities that use, distribute, produce, or import chemicals to have a material safety data sheet for each hazardous chemical which they use (29 CFR 1910.1200(g)(1)).

D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting.* Except in response to certain requests for submission of a Tier II form, a Tier I (or Tier II) form shall be submitted covering:

1. All hazardous chemicals present at the facility at any one time during the preceding calendar year in amounts equal to or greater than 10,000 pounds (or 4,540 kgs.); and

2. Extremely hazardous substances present at the facility in an amount greater than or equal to 500 pounds (or 227 kgs.—approximately 55 gallons) or the TPQ, whichever is lower.

The minimum threshold for reporting in response to a request for submission of a Tier II form by a State emergency response commission, local emergency planning committee, or fire department having jurisdiction over the facility (see subsection H. *Submission of Tier II Information to State Commissions, Local Committees, or Fire Departments*) shall be zero.

E. *Annual Reporting Period.* An inventory form containing Tier I (or Tier II) information on hazardous chemicals present at the facility during the preceding calendar year above the threshold levels established in 40 CFR 370.20(b) (see subsection D. *Minimum Threshold Levels for Tier I or Tier II Form Reporting*) shall be submitted on or before March 1 of each year. Executive Order 12856 provides that the first year of compliance with this reporting requirement for federal agencies shall be no later than the 1994 calendar year, with reports due on ore before March 1, 1995.

F. *Content of Tier I Form.* The Tier I Emergency and Hazardous Chemical Inventory Form (with instructions) is set out in 40 CFR 370.40(b). In lieu of the form, a facility may submit a State or local form that contains identical content. The Tier I Inventory Form requires a facility to provide the following information in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under OSHA and regulations promulgated under that Act.

1. An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

2. An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

3. The general location of hazardous chemicals in each category.

The EPA regulations consolidate 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200, into two health hazard and three physical hazard categories. The five Tier 1 Form hazard categories are: fire hazards; sudden release of pressure hazards; reactivity hazards; immediate (acute) health hazards; and delayed (chronic) health hazards.

G. *Contents of Tier II* Form. Tier II Emergency and Hazardous Chemical Inventory Forms (with instructions) is set out in 40 CFR 370.41(b). In lieu of the form contained in the EPA regulations, a facility may submit a state or local form that contains identical content. The Tier II Inventory Form requires the following additional information for each hazardous chemical present at the facility:

1. The chemical name or the common name of the chemical as provided on the MSDS.

2. An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

3. An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

4. A brief description of the manner of storage of the hazardous chemical.

5. The location at the facility of the hazardous chemical.

6. An indication of whether the facility elects to withhold information regarding the location of the hazardous chemical from disclosure to the public under 42 U.S.C. 11044 (see subsection L. *Withholding Certain Information From Public Disclosure.*

H. *Submission of Tier II information to State Commissions, Local Committees, or Fire Departments.* Upon request by a State emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, a facility shall provide Tier II information to the person making the request. Any such request shall be with respect to a specific facility. The Tier II Form shall be submitted within 30 days of the receipt of each request. The minimum threshold for reporting in response to a request for submission of a Tier II form by a State commission, local committee, or fire department shall be zero.

I. *Availability of Tier II Information to Other State and Local Officials.* A State or local official acting in his or her official capacity may have access to Tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for Tier II information, the State commission or local committee is authorized by EPA regulations to request the facility for the Tier II information and make available such information to the official.

J. *Availability of Tier II Information to General Public.* Any person may request Tier II information with respect to a specific facility by submitting a written request to the State commission or local committee in accordance with EPA requirements in 40 CFR 370.30(b). If the committee or commission does not have the Tier II information in its possession, EPA regulations authorize it to request a submission of the Tier II form from the facility that is the subject of the request, provided that the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds. If the request is for Tier II information on chemicals present at a facility in an amount less than 10,000 pounds, the requestor must include a general statement of need in the request. The location of any chemical shall be withheld by the State commission or local committee upon request of the facility (see subsection L. *Withholding*

Certain Information From Public Disclosure).

EPCRA requires a State commission or local committee to respond to a request for Tier II information no later than 45 days after the date of receipt of the request.

K. *Fire Department Inspection.* A facility that has submitted an inventory form shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous chemicals at the facility.

L. *Withholding Certain Information From Public Disclosure.*

1. *Physical Location of Hazardous Chemical.* All information obtained from a facility in response to a public request to a State commission or local committee for a Tier II form must be made available to the person submitting the request, provided, upon request of the facility, the commission or committee shall withhold from disclosure the location of any specific chemical identified in the Tier II form.

2. *Trade Secret Information.* EPCRA section 322 (42 U.S.C. 11042) provides that any person may withhold from a submittal of an emergency and hazardous chemical inventory reporting form the specific chemical identity (including the chemical name and other specific identification) of a hazardous chemical when such information is a trade secret and the claim of trade secrecy is substantiated in accordance with EPA regulations. Withholding and disclosure of trade secret information is discussed in section 30–60–80.

30–60–60 Treatment of Mixtures in MSDS and Inventory Reporting

A. *Basic Reporting.* A facility may meet the MSDS reporting requirements of 40 CFR 370.21 (see 30–60–40) and the inventory reporting requirements of 40 CFR 370.25 (see 30–60–50) for a hazardous chemical that is a mixture of hazardous chemicals by:

1. Providing the required information on each component in the mixture which is a hazardous chemical*; or

2. Providing the required information on the mixture itself.

***Note:** If more than one mixture has the same component, only MSDS or listing on the inventory form for the component is necessary.

B. *Same Manner of Reporting.* Where practicable, the reporting of mixtures by a facility shall be in the same manner for MSDS (see 30–60–40) and inventory (see 30–60–50) reporting.

C. *Calculation of the Quantity.* If the reporting is on each component of the mixture which is a hazardous chemical, then the concentration of the hazardous chemical, in weight percent (greater than 1% or 0.1% if carcinogenic) shall be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. If the reporting is on the mixture itself, the total quantity of the mixture shall be reported.

D. *Aggregation of Extremely Hazardous Substances.* To determine whether the reporting threshold for an extremely hazardous substance has been equaled or exceeded, the owner or operator of a facility shall aggregate the following:

1. The quantity of the extremely hazardous substance present as a component in all mixtures at the facility, and

All other quantities of the extremely hazardous substance present at the facility.

If the aggregate quantity of an extremely hazardous substance equals or exceeds the reporting threshold, the substance shall be reported.

If extremely hazardous substances are being reported and are components of a mixture at a facility, the owner or operator of a facility may report either:

1. The mixture, as a whole, even if the total quantity of the mixture is below its reporting threshold; or

2. The extremely hazardous substance component(s) of the mixture.

30–60–70 Toxic Chemical Release Inventory Reporting (EPCRA § 313; 42 U.S.C. 11023)

A. *Basic Requirement.* A facility that is subject to the EPCRA section 313 reporting requirement shall submit annually a Toxic Chemical Release Inventory Reporting Form (Form R) to EPA and to affected States and Indian tribes. The purpose of this reporting is to inform the general public and the communities surrounding covered facilities about releases of toxic chemicals, to assist research, and to aid in the development of regulations, guidelines, and standards.

A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at the facility in excess of the threshold quantity established for that chemical. The facility must report the activities and uses of the toxic chemical at the facility, quantity released to the environment (air, water, or land), maximum amount on-site during the calendar year, and amount contained in wastes transferred off-site. The facility must also provide certain treatment and pollution prevention data. Mandatory source reduction and recycling data reporting requirements were added to Form R after enactment of the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). Reporting of source reduction and recycling data is discussed in chapter 30–80.

Suppliers must also notify persons to whom they distribute mixtures or trade name products containing toxic chemicals that they contain such chemicals.

EPA regulations governing annual toxic chemical release inventory reporting and supplier notification are contained in 40 CFR part 372.

B. *Applicability of the Reporting Requirement.* Section 313 of EPCRA requires that toxic chemical release inventory (TRI) reports be filed by facilities that meet all three of the following criteria during a calendar year:

1. The facility has ten or more full-time employees;

2. The facility is included in Standard Industrial Classification (SIC) Codes 20 through 39 (Note: Executive Order 12856 requires Federal facilities to comply with section 313 without regard to standard industrial classification); and

3. The facility manufactured (including imported), processed, or otherwise used any listed toxic chemical in excess of the established threshold quantity of that chemical (see subsection D. *Reporting Threshold*).

Executive Order 12856 provides that the head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA. The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3–304(a) of the Order.

40 CFR 372.38(f) addresses reporting where two or more organizations operate establishments within a single facility on leased property without common ownership or control.

Note: The TRI reporting requirement is different from the reporting requirements in the preceding sections, because a section 313 report is not triggered by the release of a certain amount of a toxic chemical. The

criteria for reporting under section 313 is based on the amount of a toxic chemical that a facility uses in a year. If a facility uses more than a certain amount of a listed toxic chemical in a year, all releases of that chemical must be reported (unless the use or release is exempted).

C. *Information Required To Be Reported*

1. *Toxic Chemical Release Inventory.* Information elements that are reportable on EPA Form R or equivalent magnetic media format (see subsection I. *Form R. Availability*) include the following:

(a) Name and CAS number (if applicable) of the chemical reported. The toxic chemicals that are subject to EPCRA section 313 reporting are listed in 40 CFR 372.65. The EPA regulations contain three listings of the toxic chemicals: (a) An alphabetical order listing of those chemicals that have an associated Chemical Abstracts Service (CAS) Registry number; (b) a CAS number order list of the same chemicals; and (c) an alphabetical listing of the chemical categories for which reporting is required.

(b) An indication of the activities and uses of the chemical at the facility.

(c) An indication of the maximum amount of the chemical on site at any point in time during the reporting year.

(d) An estimate of total releases in pounds per year from the facility plus an indication of the basis of estimate for the following:

(1) Fugitive or non-point air emissions.

(2) Stack or point air emissions.

(3) Discharges to receiving streams or water bodies including an indication of the percent of releases due to stormwater (and the name(s) of receiving stream(s) or water body to which the chemical is released).

(4) Underground injection on site.

(5) Releases to land on site.

(e) Information on transfers of the chemical in wastes to off-site locations.

(f) Information relative to waste treatment.

(g) If the chemical identity is claimed trade secret, a generic name for the chemical.

(h) A mixture component identity if the chemical identity is not known.

Within the ''Instructions for Completing EPA Form R'', EPA warns that **because a complete Form R consists of at least nine unique pages, and submission containing less than nine unique pages will not be considered a valid submission**. A complete report for any listed toxic chemical that is not claimed as a trade secret consists of the following completed parts:

Part I with an original signature on the certification statement (section 2); and Part 11 (section 8 is now mandatory).

The instructions to Form R contain guidance for voluntary revision of a previously-submitted Form R.

Note: Reporting requirements for a current calendar year may differ from previous years. Changes from the previous year are described in the instructions for Form R and should be carefully noted. Significant changes to the reporting requirements may occur because chemicals are added to the toxic chemical list for the current reporting year or have been delisted and are not covered for the reporting year. **See the Form R Reporting Instructions for the names and CAS number of chemicals that have been delisted from, or added to, the toxic chemical list**.

2. *Source Reduction and Recycling Data.* Section 8 of EPA Form R asks for data related to source reduction and recycling. Reporting requirements for source reduction and recycling data are described in chapter 30–80.

3. *Facility Identifying Information.* Certain identifying information about the facility must be reported on Form R, including facility name and address; main business activity; all facility identifiers (I.D.) (e.g., EPA RCRA I.D. Number, NPDES permit number; Underground Injection Well Code (UIC) I.D., TRI facility I.D.); name and telephone number for both a technical contact and a public contact; and latitude and longitude coordinates for the facility.

4. *Certification by Senior Management Official.* A senior management official of the facility shall sign the Form R and make the following certification: ''I hereby certify that I have reviewed the attached documents and, to the best of my knowledge and belief, the submitted information is true and complete and that amounts and values in this report are accurate based upon reasonable estimates using data available to the preparer of the report.''

D. *Reporting Threshold.* 40 CFR 372.25 contains threshold amounts for reporting chemicals. If more than 25,000 pounds of a listed toxic chemical is manufactured (including imported) or processed at a facility in a calendar year, the chemical must be reported. If more than 10,000 pounds of a listed toxic chemical is not manufactured or processed but is otherwise used at a facility in a given calendar year, the chemical must be reported. When more than one threshold applies to an activity at a facility, the facility must report if it exceeds any applicable threshold and must report on all activities at the facility involving the chemical, unless exempted (see subsection F. *Exemptions from Reporting).*

When a facility manufactures, processes, or otherwise uses more than one member of a chemical category listed in 40 CFR 372.65(c), the facility must report if it exceeds any applicable threshold for the total volume of all the members of the category involved in the applicable activity. Any such report must cover all activities at the facility involving members of the category.

A facility may process or otherwise use a toxic chemical in a recycle/reuse operation. To determine whether the facility has processed or used more than an applicable threshold of the chemical, the facility shall count the amount of the chemical added to the recycle/reuse operation during the calendar year. In particular, if the facility starts up such an operation during a calendar year, or in the event that the contents of the whole recycle/reuse operation are replaced in a calendar year, the facility shall also count the amount of the chemical replaced into the system at these times.

If a toxic chemical is listed in 40 CFR 372.65 with the notation that only persons who manufacture the chemical, or manufacture it by a certain method, are required to report, a facility that solely processes or uses such a chemical is not required to report for that chemical. Only a facility that manufactures that chemical in excess of the threshold applicable to such manufacture is required to report. In completing the reporting form, the manufacturing facility is only required to account for the quantity of the chemical so manufactured and releases associated with such manufacturing, but not releases associated with subsequent processing or use of the chemical at that facility.

E. *Toxic Chemical Components of a Mixture or Trade Name Product.* A report is required on a toxic chemical that is known to be present as a component of a mixture or trade name product which is received from another person, if that chemical is imported, processed, or otherwise used by the receiving facility in excess of an applicable threshold quantity as part of that mixture or trade name product. For purposes of EPA regulations, knowledge that a toxic chemical is present as a component of a mixture or trade name product exists if the operator of the facility:

1. Knows or has been told the chemical identity or Chemical Abstracts Service Registry Number of the chemical and the identity or Number corresponds to an identity or Number in 40 CFR 372.65, or

2. Has been told by the supplier of the mixture or trade name product that the

mixture or trade name product contains a toxic chemical subject to EPCRA section 313.

Guidance in determining whether a toxic chemical which is a component of a mixture or trade name product has been imported, processed, or otherwise used in excess of an applicable threshold at the facility can be found at 40 CFR 372.30(b)(3).

F. Exemptions from Reporting

1. *Laboratory Activities.* Toxic chemicals manufactured, processed, or used in a laboratory at a covered facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee)* do not have to be considered in determining whether a threshold has been met unless the laboratory is engaged in:

(a) Specialty chemical production;

(b) Manufacture, processing, or use of toxic chemicals in pilot plant-scale operations; or

(c) Activities conducted outside the laboratory.

*40 CFR 720.3(ee) defines ''technically qualified individual'' as ''a person or persons (1) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision; (2) who is responsible for enforcing appropriate methods of conducting a scientific experimentation, analysis, or chemical research to minimize such risks; and (3) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting a research and development activity.''

2. *Other Uses.* If a toxic chemical is used at a covered facility for one of the following purposes, the facility is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met or determining the amount of releases to be reported:

(a) use as a structural component of the facility;

(b) Use of products for routine janitorial or facility grounds maintenance (e.g., use of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products);

(c) Personal use by employees or other persons at the facility of foods, drugs, cosmetics, or other personal items containing toxic chemicals, including supplies of such products within the facility such as in a facility operated cafeteria, store, or infirmary;

(d) Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility;

(e) Use of toxic chemicals present in process water and non-contact cooling water as drawn from the environment or from municipal sources, or toxic chemicals present in air used either as compressed air or as part of combustion.

Note. If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as described in this subsection, in excess of an applicable threshold quantity, the facility is required to report under 40 CFR 372.30.

3. *De Minimis Concentrations of a Toxic Chemical in a Mixture.* A facility is not required to consider the quantity of a toxic chemical present in a mixture of chemicals when determining whether an applicable threshold has been met or determining the amount of release to be reported if the toxic chemical is in a concentration in the mixture which is:

(a) Below 1 percent of the mixture; or

(b) Below 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen as defined in 29 CFR 1910.1200(d)(4).

This exemption applies whether the facility received the mixture from another person or the facility produced the mixture, either by mixing the chemicals involved or by causing a chemical reaction which resulted in the creation of the toxic chemical in the mixture.

Note: If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the mixture or in a mixture at higher concentrations, in excess of an applicable threshold quantity, the facility is required to submit a Form R.

4. *Articles.* The quantity of a toxic chemical present in an article at a covered facility need not be considered when determining whether an applicable threshold has been met or determining the amount of release to be reported. ''Article'' means a manufactured item which:

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent in whole or in part upon its shape or design during end-use; and

(c) Does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

This exemption applies whether the facility received the article from another person or the facility produced the article. However, this exemption applies only to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, in excess of an applicable threshold quantity, the facility is required to submit a Form R. If a release* of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of ''article''.

*''Release'' means ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical.'' (40 CFR 372.3)

5. *Ownership of Leased Real Estate.* EPA regulations provide that the owner of a covered facility ''is not subject to TRI reporting if such owner's only interest in the facility is ownership of the real estate upon which the facility is operated.'' (40 CFR 372.38(e)). This exemption applies to owners of facilities, such as industrial parks, all or part of which are leased to persons who operate establishments within SIC code 20 through 39 where the owner has no other business interest in the operation of the covered facility.

G. *Annual Reporting Period.* Reports are due annually and contain data on releases during the previous calendar year. The report for any calendar year must be submitted on or before July 1 of the following year. Executive Order 12856 provides that the first year of compliance for Federal agencies with the reporting requirements in EPCRA Section 313 shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

H. *Reporting for Establishments Within a Facility.* For purposes of submitting a Form R, a ''covered facility'' may consist of more than one establishment. A separate Form R may be submitted for each establishment or for each group of establishments within the facility, provided that activities involving the toxic chemical at all the establishments within the covered facility are reported. If each establishment or group of establishments files separate reports, then separate reports must be submitted for all other chemicals subject to reporting at that facility. An establishment or group of establishments does not have to submit a report for a chemical that is not manufactured (including imported), processed, otherwise used, or released at that establishment or group of establishments.

I. *Form R Availability.* Reports under section 313 of EPCRA are made on EPA Form R (EPA Form 9350–1), the Toxic Chemical Release Inventory (TRI) Reporting Form. Form R is submitted to EPA, affected States, and Indian tribes. A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at each covered facility in excess of an applicable threshold.

EPA encourages facilities to submit the required information to EPA by using magnetic media (computer disk or tape) in lieu of Form R. Instructions for submitting and using magnetic media may also be obtained from the address given in this subsection.

The most current version of EPA Form R, including instructions for Form R, and related documents may be obtained from: Section 313 Document Distribution Center, P.O. Box 12505, Cincinnati, OH 45212.

EPA Form R and instructions also may be obtained by calling the EPCRA Information Hotline. Questions about completing Form R may be directed to the EPCRA Information Hotline at the following address or telephone numbers: Emergency Planning and Community Right-to-Know (EPCRA) Information Hotline, Environmental Protection Agency, 401 M Street, SW (OS–120), Washington, DC 20460; 800–535–2002 or 703–920–9877 from 8:30 a.m. to 7:30 p.m. Eastern Time (Mon-Fri, except Federal holidays.).

The toll-free number is accessible throughout the United States, including Washington, DC, and Alaska. EPA Regional Staff may also be of assistance.

EPA has developed a package called the Toxic Chemical Release Inventory Reporting System. The diskette comes with complete instructions for use. It also provides prompts and messages to help report according to EPA instructions. For copies of the diskette, call the EPCRA Hotline.

J. *Where Reports Are To Be Sent.* Reports are to be sent to EPA and to the State-designated Sec. 313 contact for the State in which the facility is located or the designated official of an Indian tribe if it is located on Indian land.

Send reports to EPA by mail to: EPCRA Reporting Center, P.O. Box 23779, Washington, DC 20026–3779, Attn: Toxic Chemical Release Inventory.

To submit a Form R via hand delivery or certified mail, the EPCRA Information Hotline may be called to obtain the street address of the EPCRA Reporting Center. The Form R instructions include appropriate State submission addresses. Note that ''state'' also includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S.-Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. The Form R instructions also include information on sending copies to the applicable Indian tribe and submission of reports in magnetic media and computer-generated facsimile forms.

K. Supplier Notification Requirement

1. *Basic Requirement.* EPA regulations provide that a facility that manufactures (including imports) or processes a toxic chemical and sells or otherwise distributes a mixture or trade name product containing the toxic chemical to a facility in Standard Industrial Classification Codes 20 through 30 that employs ten or more people, or to a person who in turn may sell or otherwise distribute such mixture or trade name product to such a facility, must provide a notification to each person to whom the mixture or trade name product is sold or otherwise distributed from the facility.

Note: 40 CFR 372.45 states that only those facilities that are in Standard Industrial Classification (SIC) codes 20 through 39 (see 40 CFR 372.22(b)) must provide a supplier notification. However, Executive Order 12856 states that each Federal agency is to comply with the provisions set forth in section 313 of EPCRA and all implementing regulations without regard to the SIC delineations that apply to the Federal agency's facilities.

40 CFR 372.45(h) addresses operation of separate establishments within a single facility by two organizations that do not have common ownership or control.

2. *Notification Contents.* The notification shall be in writing and shall include:

(a) A statement that the mixture or trade name product contains a toxic chemical or chemicals subject to the reporting requirements of EPCRA section 313 and 40 CFR part 372.

(b) The name of each toxic chemical, and the associated Chemical Abstracts Service registry number of each chemical if applicable, as set forth in 40 CFR 372.65.

(c) The percent by weight of each toxic chemical in the mixture or trade name product.

3. *Notification Procedure.* The written notice shall be provided to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product in each calendar year, beginning with the chemical's applicable effective date (see 40 CFR 372.65 for effective dates).

If an MSDS is required to be prepared and distributed for the mixture or trade name product in accordance with 29 CFR 1910.1200, the notification must be attached to or otherwise incorporated into the MSDS. When the notification is attached to the MSDS, the notice must contain clear instructions that the notifications must not be detached from the MSDS and that any copying and redistribution of the MSDS shall include copying and redistribution of the notice attached to copies of the MSDS subsequently redistributed.

4. *Exemption from Notification.* Notifications are not required in the following instances:

(a) If a mixture or trade name product contains no toxic chemical in excess of the applicable *de minimis* concentration (see subsection F. *Exemptions from Reporting*).

(b) If a mixture or trade name product is one of the following:

(1) An ''article'' (see subsection F. *Exemptions from Reporting*);

(2) Foods, drugs, cosmetics, alcoholic beverages, tobacco, or tobacco products packaged for distribution to the general public.

(3) any consumer product as the term is defined in the Consumer Product Safety Act (15 U.S.C. 1251 *et seq.*) packaged for distribution to the general public.

Note: EPA regulations also state that a person is not subject to the supplier notification requirement to the extent the person does not know that the facility or establishment(s) is selling or otherwise distributing a toxic chemical to another person in a mixture or trade name product. However * * * a person has such knowledge if the person receives a notice * * * from a supplier of a mixture or trade name product and the person in turn sells or otherwise distributes that mixture or trade name product to another person.'' (40 CFR 372.45(g))

5. *Change in Mixture or Trade Name Product.* If a facility changes a mixture or trade name product for which notification was previously provided by adding a toxic chemical, removing a toxic chemical, or changing the percent by weight of a toxic chemical in the mixture or trade name product, the facility shall provide each recipient of the changed mixture or trade name product a revised notification reflecting the change with the first shipment of the changed mixture or trade name product to the recipient.

If a facility discovers:

(a) That a mixture or trade name product previously sold or otherwise distributed to another person during the calendar year contains one or more toxic chemicals, and

(b) That any notification provided to such other person in that calendar year either did not properly identify any of the toxic chemicals or did not accurately present the percent by weight of any of the toxic chemicals in the mixture or trade name product.

the facility shall provide a new notification to the recipient within 30 days of the discovery and identify the prior shipments of the mixture or product to which the new notification applies.

6. *Trade Secret.* If the specific identity of a toxic chemical in a mixture or trade name product is considered to be a trade secret under provisions of 29 CFR 1910.1200, the notice shall contain a generic chemical name that is descriptive of that toxic chemical.

If the specific percent by weight composition of a toxic chemical in the mixture or trade name product is considered to be a trade secret under applicable state law or under the Restatement of Torts section 757, comment b, the notice must contain a statement that the chemical is present at a concentration that does not exceed a specified upper bound concentration value. For example, a mixture contains 12 percent of a toxic chemical. However, the supplier considers the specific concentration of the toxic chemical in the product to be a trade secret. The notice would indicate that the toxic chemical is present in the mixture in a concentration of no more than 15 percent by weight. The upper bound value chosen must be no larger than necessary to adequately protect the trade secret.

L. Recordkeeping

1. *Retention of Form R Materials and Documentation.* Each facility subject to the reporting requirements of this chapter (30–60) must retain the following records for a period of 3 years from the date of the submission of a Form R:

(a) A copy of each Form R submitted by the facility;

(b) All supporting materials and documentation used to make the compliance determination that the facility is a covered facility;

(c) Documentation supporting a submitted Form R, including:

(1) Documentation supporting any determination that a claimed allowable exemption from reporting applies.

(2) Data supporting the determination of whether a threshold applies for each toxic chemical.

(3) Documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.

(4) Documentation supporting the use indications and quantity on site reporting for each toxic chemical, including dates of manufacturing, processing, or use.

(5) Documentation supporting the basis of estimate used in developing any release or off-site transfer estimates for each toxic chemical.

(6) Receipts or manifests associated with the transfer of each toxic chemical in waste to off-site locations.

(7) Documentation supporting reported waste treatment methods, estimates of treatment efficiencies, ranges of influent concentration to such treatment, the sequential nature of treatment steps, if applicable, and the actual operating data, if applicable, to support the waste treatment efficiency estimate for each toxic chemical.

2. *Retention of Supplier Notification Materials and Documentation.* Each facility subject to the supplier notification requirement (see subsection K. *Supplier Notification Requirement*) must retain the following records for a period of 3 years from the date of the submission of a notification:

(a) A copy of each notice.

(b) All supporting materials and documentation used to make the compliance determination that the facility is a covered facility.

(c) All supporting materials and documentation used by the facility to determine whether a supplier notification is required.

(d) All supporting materials and documentation used in developing each required notice.

3. *Availability of Records.* Records must be maintained at the facility to which the Form R report applies or from which a notification was provided. Such records must be readily available for purposes of inspection by EPA. According to the Form R instructions, in the event of a problem with data elements on a facility's Form R, EPA may request documentation that supports the information reported from the facility. EPA may conduct data quality reviews of past Form R submissions. An essential component of this process would be to review a facility's records for accuracy and reliability. The Form R instructions include a list of records that a facility should maintain in addition to those that are required to be maintained.

30–60–80 Public Availability of Information; Withholding and Disclosure of Trade Secrets

A. *Availability of Information to Public.* EPCRA section 324 (42 U.S.C. 11044) provides that each emergency response plan, MSDS, list of hazardous chemicals, inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, subject to trade secret limitations, at locations designated by the Administrator of EPA, Governor, State emergency response commission, or local emergency planning committee. Each local emergency planning committee must annually publish a notice in local newspapers indicating where members of the public may review documents that have been submitted pursuant to EPCRA. EPA also maintains a national toxic chemical inventory, based on TRI reports, in a computer data base that is available to the public on a cost-reimbursable basis.

The Administrator of EPA, in any case in which the identity of a toxic chemical is claimed as a trade secret, must identify the adverse health and environmental effects associated with the toxic chemical and assure that such information is included in the TRI computer database and is provided to any person requesting information about such toxic chemical. The appropriate Governor or state commission must identify the adverse health effects associated with a hazardous chemical or extremely hazardous substance, when its identity is claimed as a trade secret, and provide such health effects information to any person requesting information about the hazardous chemical or extremely hazardous substance.

Section 5–508 of Executive Order 12856 also provides that the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under the order by the agency preparing the strategy, plan, or report (to the extent permitted by law). When the reports are submitted to EPA, EPA is to compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged by the Executive Order to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public. Section 6–601 of Executive Order 12856 authorizes an agency to withhold certain information. (See 30–90)

B. *Trade Secret Procedures.* EPCRA section 322 (42 U.S.C. 11042) provides that a claim of trade secrecy may be made for the specific chemical identity of an extremely hazardous substance, a hazardous chemical, or a toxic chemical. Detailed information on how to submit a trade secrecy claim for information submitted pursuant to an EPCRA reporting requirement is

contained in 40 CFR Part 350. A trade secrecy claim may be submitted only to EPA and must be substantiated by providing specific answers to questions on an EPA form entitled ''Substantiation to Accompany Claims of Trade Secrecy'' (see 40 CFR 350.27). The submitter shall include with its EPCRA report both a sanitized and unsanitized trade secret substantiation form. The unsanitized version must contain all of the information claimed as trade secret or business confidential, properly marked in accordance with EPA regulations. The sanitized version is identical to the unsanitized version in all respects except that all of the information claimed as trade secret or business confidential is deleted, and a generic class or category to describe the trade secret chemical is included. This sanitized version is the one that is submitted to state or local authorities, as appropriate.

C. *Public Petition for Disclosure of Trade Secret Information.* The public may request the disclosure of a chemical identity claimed as trade secret by submitting a written petition to EPCRA Reporting Center, Environmental Protection Agency, P.O. Box 3348, Merrifield, Va. 22116–3348. The required contents of the petition are described in 40 CFR 350.15. This public petition process covers only requests for public disclosure of a chemical identify claimed as trade secret. Requests for disclosure of other types of information must be submitted under EPA's Freedom of Information Act regulations at 40 CFR part 2.

D. Access by Federal Representatives or State Employees

1. *Authorized Federal Representative Access.* Under EPCRA section 322(f) (42 U.S.C. 11042(f)), EPA possesses the authority to disclose information to any authorized representative of the United States concerned with carrying out the requirements of EPCRA, even though the information might otherwise be entitled to trade secret or confidential treatment under EPA regulations. Such authority will be exercised by EPA only in accordance with 40 CFR 350.23.

2. *State Employee Access.* Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA in accordance with 40 CFR 350.19. EPA must release this information, even if claimed confidential, to any State in response to its written request is the request is from the Governor of the State and the State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information. The Governor may disclose such information only to State employees.

E. *Access by Health Professionals.* EPCRA section 323 (42 U.S.C. 11043) allows health professionals to gain access to chemical identities, including those claimed as trade secret, in the following circumstances:

- For non-emergency treatment and diagnosis of an exposed individual;
- By health professionals employed by a local government to conduct preventive research studies and to render medical treatment; or
- For emergency diagnosis and treatment.

1. *Non-emergency Access.* In all circumstances but the medical emergency, the health professional must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret. The required contents of the written request for access, including a certification signed by the health professional stating that the information contained in the statement of need is true, and the confidentiality statement are contained in 40 CFR 350.40. Following receipt of a written request, the facility to which such request is made shall provide the requested information to the health professional promptly.

2. *Emergency Access.* In the event of medical emergency,* a facility which is subject to the EPCRA reporting requirements must provide a copy of a MSDA, an inventory form, or a toxic chemical release form, including the specific chemical identity, if know, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information. The treating physician or nurse must have first determined that:

(a) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(c) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

The specific chemical identity must be provided to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance. A written statement of need and confidentiality agreement may be required from the treating physician or nurse as soon as circumstances permit. The required contents of the statement of need and confidentiality agreement are specified in 40 CFR 350.40.

*''Medical emergency'' means ''any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.'' (40 CFR 350.40(a)).

30–60–90 Compliance

A. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits and take such other steps as may be necessary to monitor compliance with the requirements of this chapter (30–60) and Executive Order 12856. Compliance with EPCRA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

B. *Annual Progress Report.* The Secretary will submit annual progress reports to the EPA Administrator beginning on October 1, 1995, regarding the progress that has been made in complying with all aspects of Executive Order 12856. This report and OPDIV/STAFFDIV responsibilities are described in chapter 30–09.

C. *Technical Assistance from EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter (30–60).

D. *EPA Monitoring.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with the agency's EPCRA responsibilities contained in sections 30–60–20 through 30–60–70 of this chapter. OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify an OPDIV/STAFFDIV that it is not in compliance with an applicable provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

E. *State and Local Right-to-Know Requirements.* OPDIV/STAFFDIVs are

encouraged to comply with all state and local right-to-know requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

F. *Prior Agreements for Application of EPCRA.* The compliance dates for application of EPCRA set forth in Executive Order 12856 are not intended to delay implementation of earlier timetables already agreed to by an OPDIV/STAFFDIV and are inapplicable to the extent they interfere with those timetables.

30–60–100 Civil and Criminal Penalties

EPCRA section 325 (42 U.S.C. 11045) establishes administrative, civil, and criminal penalties for violation of the Act. Table 2, following, indicates penalties that apply for specific violations. Certain section 325 penalties do not apply to government entities. Moreover, Executive Order 12856 does not make the provisions of section 325 applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provision.

TABLE 2.—SUMMARY OF EPCRA PENALTIES

Requirement	Administrative penalty	Civil penalty	Criminal penalty
Emergency Planning (42 U.S.C. § 11002(c); § 11003(d)).	.....	$25,000 per day.	
Emergency Release Notification (42 U.S.C. § 11004) ...	$25,000 per day ..... Second violation: $75,000 per day.	$25,000 per day ..... Second violation: $75,000 per day.	25,000 or two (2) years imprisonment or both Second conviction $50,000 or five (5) years imprisonment or both
MSDS Reporting (42 U.S.C. § 11021)[1]	$10,000 per day	$10,000 per day.	
Inventory Reporting (42 U.S.C. § 11022)[1]	$25,000 per day	$10,000 per day.	
TRI Reporting (42 U.S.C. § 11023)[1]	$25,000 per day	$25,000 per day.	
Provision of Information to Health professionals (42 U.S.C. § 11043(b))[1].	$10,000 per day	$10,000 per day.	
Failure to Substantiate Trade Secret Claim (42 U.S.C. § 11042(a)(2)).	$10,000 per day	$10,000 per day.	
Frivolous Trade Secret Claim	$25,000 per claim	$25,000 per claim.	
Disclosure Trade Secret Information (42 U.S.C. § 11042).	.....	.....	$20,000 or one year imprisonment or both.

[1] Penalty does not apply to a ''government entity.''

HHS Chapter 30–70—General Administration Manual; HHS Transmittal 98.2

Subject: Pollution Prevention Act of 1990 (PPA) Requirements

30–70–00 Background

The Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109, establishes national policy that pollution is to be prevented or reduced at the source. The Act also requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. This reporting requirement affects all facilities required to submit Form R under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (see 30–60).

The Administrator of EPA is required by the PPA to develop a strategy to promote source reduction and to submit a biennial report to Congress that describes the actions taken to implement the strategy and analyzes the source reduction and recycling data submitted on Form R. EPA must also promote source reduction practices in other federal agencies; review EPA regulations to determine their effect on source reduction; make matching grants to states to promote the use of source reduction techniques by businesses; and establish a Source Reduction Clearinghouse.

30–70–05 Applicability

A. *Agency Facilities.* Executive Order 12856 provides that EPCRA and the PPA apply to all Federal executive agencies that either own or operate a ''facility'' as that term is defined in EPCRA, if such facility meets the EPCRA's threshold requirements for compliance. The statutory definition of facility is:

> All buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft (42 U.S.C. 11049(4)).

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 355.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

Executive Order 12856 modifies the statutory definition of facility in one respect. Each OPDIV/STAFFDIV must comply with the reporting provisions of the PPA without regard to the Standard Industrial Classification (SIC) delineations that apply to the organization's facilities, and such reports shall be for all releases, transfers, and wastes at such facilities without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the PPA reporting requirements in this chapter (see 30–60–70).

B. *Covered Facilities.* The reporting requirements of this chapter apply to facilities that must submit a Toxic Chemical Release Inventory Report (Form R) under section 313 of EPCRA. A completed Form R must be submitted for each toxic chemical manufactured,

processed, or otherwise used at a covered facility in excess of the threshold quantity established for that chemical (see 30–60–70). Each OPDIV/STAFFDIV must apply all of the provisions of this chapter to each of its covered facilities, except for a federal agency outside the customs territory of the United States.

C. *GOCO'S.* Executive Order 12856 does not alter the obligations which government-owned, contractor-operated facilities (GOCOS) have under EPCRA and the PPA independent of that order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, each OPDIV/STAFFDIV shall include the releases and transfers from all such facilities when meeting all of its responsibilities under this chapter.

D. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the Administrator of EPA by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and Executive Order 12856.

30–70–10 Responsibilities

A. *HHS.* An objective of Executive Order 12856 (see 30–80) is to ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated, or disposed of in a manner protective of public health and the environment.

Executive Order 12856 requires the Secretary to comply with the reporting provisions set forth in section 6607 of the PPA (42 U.S.C. 13106), all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

B. *OPDIVs/STAFFDIVs.* The head of each OPDIV/STAFFDIV is responsible for ensuring that the OPDIV/STAFFDIV takes all necessary actions to prevent pollution in accordance with Executive Order 12856, and for that organization's compliance with the provisions of the PPA. Compliance with the PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. An OPDIV/STAFFDIV should consult with EPA when a question arises as to the applicability of Executive Order 12856 to a particular facility.

30–70–20 Pollution Prevention Policy

A. *Pollution Prevention Act.* Section 6602(b) (42 U.S.C. 13101(b)) of the PPA states that it is the national policy of the United States that:

> Pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

OPDIVs/STAFFDIVs are to incorporate the environmental management hierarchy stated in this policy into their environmental management practices and procedures.

Source reduction is fundamentally different and more desirable than waste management and pollution control. Preventing pollution before it is created is preferable to trying to manage, treat, or dispose of pollution after it is generated. OPDIVs/STAFFDIVs are encouraged to take advantage of opportunities to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes can result in substantial savings in reduced raw materials, pollution control, and liability costs as well as help protect the environment and reduce the risks to worker health and safety.

B. *Executive Order 12856.* Executive Order 12856 indicates that the Federal government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies. Additional policies and requirements that apply to pollution prevention are contained in chapter 30–80.

30–70–30 Definitions

A. *Pollution Prevention.* Executive Order 12856 defines ''pollution prevention'' in section 2–203 to mean ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources; or
- Protection of natural resources by conservation.

EPA has issued a Statement of Definition of Pollution Prevention that is identical to the definition in section 2–203 of Executive Order 12856 (Memorandum from F. Henry Habicht II, Deputy Administrator, Environmental Protection Agency, Subject: EPA Definition of ''Pollution Prevention'', to All EPA Personnel (May 28, 1992)). The Statement of Definition explains that recycling, energy recovery, treatment, and disposal are not included within EPA's definition of pollution prevention. In distinguishing between prevention of pollution and recycling, EPA includes ''in-process recycling'' within the definition of ''pollution prevention.'' ''Out-of-process recycling'' is part of recycling and is not part of the definition. The Statement of Definition also comments that recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention—it can reduce the need for treatment or disposal, and conserve energy and resources.

Note: A different definition of pollution prevention is used in guidance from the Council on Environmental Quality in NEPA matters (see 30–50–50).

B. *Source Reduction.* ''Source reduction'' is defined in PPA section 6603(6) (42 U.S.C. 13102(5)) to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and
- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The term ''source reduction'' does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to and necessary for producing a product or providing a service.

30–70–40 Toxic Chemical Source Reduction and Recycling Reporting

A. *Requirement.* Section 6607 of the PPA (42 U.S.C. 13106) directs each facility that is required to file an annual toxic chemical release form (Form R) under Sec. 313 of EPCRA to include a toxic chemical source reduction and

recycling report with its toxic chemical release filing. The report must cover each toxic chemical required to be reported on Form R. Form R is discussed in 30–60–70. Reporting requirements under the PPA cover releases of toxic chemicals to all media (air, water, and land).

B. *Reporting Period.* A facility that is subject to the EPCRA section 313 and PPA section 6607 reporting requirements shall submit annually a Toxic Chemical Release Inventory Reporting Form (Form R) to EPA and to affected States and Indian tribes (see 30–60–70). Executive Order 12856 provides that the first year of compliance for Federal agencies with the PPA's reporting requirements shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

C. *Toxic Chemicals to be Reported.* The toxic chemicals that are subject to EPCRA section 313 and PPA section 6607 reporting are listed in 40 CFR 372.65. Additions to, or deletions from, the list are described each year in the *EPA Toxic Chemical Release Inventory Reporting Form R and Instructions* published in the **Federal Register** and available booklet form from EPA. A completed Form R must be submitted for each toxic chemical manufactured, processed, or otherwise used at a covered facility in excess of the threshold quantity established for that chemical (see 30–60–70). Form R now includes data elements mandated by section 6607 of the PPA. A facility must provide information about source reduction and recycling activities related to each toxic chemical reported on Form R.

D. *Information to be Reported based on the ''Instructions for Completing EPA Form R''*

1. *Chemical Quantities.* Facilities must provide the following quantity information (in pounds) for each toxic chemical reported on Form R for the current reporting year, the prior year, and quantities anticipated in both the first year immediately following the reporting year and the second year following the reporting year (future estimates):

(a) Quantity of the toxic chemical (prior to recycling, treatment or disposal but not including one-time events) entering any waste stream or otherwise released* into the environment.

*Reportable releases include ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment of barrels, containers, and other closed receptacles).'' (EPCRA § 329(8); 42 U.S.C. 11049(8)).

(b) Quantity of the toxic chemical or a mixture containing a toxic chemical that is used for energy recovery on-site or is sent off-site for energy recovery, unless it is a commercially available fuel;

Note: Reportable on-site and off-site energy recovery is the combustion of a residual material containing a TRI toxic chemical when (1) the combustion unit is integrated into an energy recovery system (i.e., industrial furnaces, industrial kilns, and boilers); and (ii) the toxic chemical is combustible and has a heating value high enough to sustain combustion.

(c) Quantity of the toxic chemical or a mixture containing a toxic chemical that is recycled on-site or is sent off-site for recycling;

(d) Quantity of the toxic chemical or a mixture containing a toxic chemical that is treated on-site or is sent to an off-site location for waste treatment; and

(e) Total quantity of toxic chemical released directly into the environment or sent off-site for recycling, waste treatment, energy recovery, or disposal during the reporting year due to any of the following events:

(1) Remedial actions.

(2) Catastrophic events, such as earthquakes, fires, or floods; or

(3) One-time events not associated with normal or routine production processes.

Note: The PPA separates the reporting of quantities of toxic chemical recycled, used for energy recovery, treated, or disposed that are associated with normal or routine production operations from those that are not. Other sections of Form R dealing with releases to the environment and off-site transfers must include all releases and transfers as appropriate, regardless of whether they arise from catastrophic, remedial, or routine process operations.

Information available at the facility that may be used to estimate the prior year's quantities include the prior year's Form R submission, supporting documentation, and recycling, energy recovery, or treatment operating logs or invoices. However, for the first year of reporting these data elements, prior year quantities are required only to the extent such information is available. EPA expects reasonable future quantity estimates using a logical basis. Reporting facilities should take into account protections available for trade secrets as provided in EPCRA section 322 (42 U.S.C. 11042) (see 30–60–80).

2. *Production Ratio or Activity Index.* The facility must report a ratio of reporting year production to prior year production, or an ''activity index'' based on a variable other than production that is the primary influence on the quantity of the reported toxic chemical recycled, used for energy recovery, treated, or disposed.

3. *Source Reduction Activities.* If a facility engaged in any source reduction activity for the reported toxic chemical during the reporting year, the facility shall report the activity that was implemented. This information is to be reported only if a source reduction activity was newly implemented specifically (in whole or in part) for the reported toxic chemical during the reporting year. ''Source reduction activities'' are those actions that are taken to reduce or eliminate the amount of the reported toxic chemical released, used for energy recovery, recycled, or treated. Actions taken to recycle treat or dispose of the toxic chemical are not considered source reduction activities. Form R provides for the reporting of source reduction activities by category. The categories include:

- Good Operating Practices
- Inventory Control
- Spill and Leak Prevention
- Raw Material Modifications
- Process Modifications
- Cleaning and Degreasing
- Modified Containment Procedures for Cleaning Units
- Surface Preparation and Finishing
- Product Modifications

4. *Source Reduction Techniques.* If a facility engaged in any source reduction activity for the reported toxic chemical during the reporting year, the facility must also report the method used to identify the opportunity for the activity implemented. Methods to identify source reduction opportunities include:

- Internal or external pollution prevention opportunity audits(s)
- Materials balance audits
- Participative team management
- Employee recommendations (under a formal OPDIV/STAFFDIV Program or independent of a formal program)
- Federal or state government technical assistance program
- Trade association/industry technical assistance program
- Vendor assistance

5. *Additional Source Reduction, Recycling, or Pollution Control Information.* Form R provides an opportunity for a reporting facility to indicate any additional information on source reduction, recycling, or pollution control activities implemented at the facility in the reporting year or in prior years for the reported toxic chemical.

E. *Relationship to RCRA Reporting.* The reporting categories for quantities recycled, treated, used for energy recovery, and disposed apply to completing the source reduction section

as well as to the rest of Form R. According to EPA, these categories are to be used only for TRI reporting. They are not intended for use in determining, under the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations, whether a secondary material is a waste when recycled. These categories (and their definitions) also do not apply to the information that may be submitted in a Hazardous Waste Report by hazardous waste generators and treatment, storage, and disposal (TSD) facilities to EPA or an authorized state under RCRA sections 3002 and 3004 (42 U.S.C. 6922, 6924). Differences in terminology and reporting requirements for toxic chemicals reported on Form R and for hazardous wastes regulated under RCRA occur because EPCRA and the PPA focus on specific chemicals, while the RCRA regulations and the Hazardous Waste Report focus on wastes, including mixtures.

F. *Form R Availability.* Reports under EPCRA section 313 and PPA section 6607 are made on EPA Form R (EPA Form 9350–1), the *Toxic Chemical Release Inventory (TRI) Reporting Form*. EPA encourages facilities to submit the required information to EPA by using magnetic media (computer disk or tape) in lieu of Form R. More complete guidance on obtaining Form R and sources of information regarding, the submittal of Form R is contained in section 30–60–70.

G. *Where Reports Are to be Sent.* Form R is submitted to EPA, affected States, and affected Indian tribes.

Send reports to EPA by mail to: EPCRA Reporting Center, P.O. Box 23779, Washington, D.C. 20026–3779, Attn: Toxic Chemical Release Inventory.

To submit a Form R via hand delivery or certified mail, the EPCRA Hotline (800–535–2002) may be called to obtain the street address of the EPCRA Reporting Center.

Additional information on submitting a Form R is contained in section 30–60–70.

H. *Trade Secrets.* The provisions of EPCRA section 322 (42 U.S.C. 11042) dealing with the protection of trade secrets apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of EPCRA (see 30–60–80).

30–70–50 Public Availability of Source Reduction Information

A. *OPDIVs/STAFFDIVs.* Unless such documentation is withheld pursuant to a statutory requirement or Executive Order, the public shall be afforded ready access to all reports required to be prepared by an OPDIV/STAFFDIV under this chapter. OPDIVs/STAFFDIVs are encouraged to provide such reports to the state and local authorities where their facilities are located for an additional point of access to the public. Public availability of information submitted on Form R is also discussed in section 30–60–80.

B. *EPA.* The PPA and Executive Order 12856 require the Administrator of EPA to make available to the public the source reduction information gathered pursuant to the PPA and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. Subject to the trade secret provisions of EPCRA, EPA must make the data collected on Form R, pursuant to section 6607 of the PPA, publicly available in the same manner as the data collected under EPCRA section 313. The Administrator has also established, in accordance with PPA section 6606 (42 U.S.C. 13105), a Source Reduction Clearinghouse to compile information, including a computer data base that contains information on management, technical, and operational approaches to source reduction. The data base permits entry and retrieval of information by any person.

30–70–60 Compliance

A. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with the requirements of this chapter and Executive Order 12856.

B. *Annual Progress Report.* The Secretary will submit annual progress reports to the EPA Administrator beginning on October 1, 1995, regarding the progress that has been made in complying with all aspects of Executive Order 12856, including the pollution reduction requirements. This report and OPDIV/STAFFDIV responsibilities are described in Chapter 30–80.

C. *Technical Assistance from EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter.

D. *EPA Monitoring.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with the PPA responsibilities contained in this chapter. OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify an OPDIV/STAFFDIV that it is not in compliance with an applicable provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

E. *State and Local Pollution Prevention Requirements.* OPDIVs/STAFFDIVs are encouraged to comply with all State and local pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

F. *Funding Pollution Prevention Programs.* In accordance with Executive Order 12856, OPDIVs/STAFFDIVs shall place high priority on obtaining funding and resources needed for implementing pollution prevention strategies, plans, and assessments by identifying, requesting, and allocating funds through line-item or direct funding requests. Funding requests shall be made in accordance with the Federal Agency Pollution Prevention and Abatement Planning Process and through budget requests as outlined in Office of Management and Budget (OMB) Circulars A–106 and A–11, respectively.

G. *Life Cycle Analysis and Total Cost Accounting.* OPDIVs/STAFFDIVs should apply, to the maximum extent practicable, life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this chapter.

H. *Contractors.* All OPDIVs/STAFFDIVs shall provide, in all future contracts between the organization and its relevant contractors, for the contractor to supply all information the OPDIV/STAFFDIV deems necessary for it to comply with this chapter. In addition, to the extent that compliance with this chapter and Executive Order 12856 is made more difficult due to lack of information from existing contractors, an OPDIV/STAFFDIV shall take practical steps to obtain the information from such contractors that is needed to comply.

I. *Prior Agreements for Application of EPCRA and PPA.* The compliance dates for application of EPCRA and PPA set forth in Executive Order 12856 are not intended to delay implementation of earlier timetables already agreed to by a Federal agency and are inapplicable to the extent they interfere with those timetables.

30–70–70 Civil and Criminal Penalties

EPCRA section 325(c) (42 U.S.C. 11045(c)), which provides civil and administrative penalties for failure to report TRI information, also applies to the PPA's requirement to report toxic chemical source reduction and recycling information on Form R. The penalty for

failure to file a Form R is $25,000 for each day of violation of the law.

EPCRA section 325(c) penalties do not apply to a governmental entity. Moreover, Executive Order 12856 does not make the provisions of section 325 applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions.

HHS Chapter 30–80—General Administration Manual; HHS Transmittal 98.2

Subject: Executive Order 12856, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements

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30–80–00 Background

The objective of Executive Order 12856, August 3, 1993 (58 FR 41981), is to foster the Federal government as a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals. The Order also encourages the Federal government to be a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies. Executive Order 12856 seeks to ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable:

- The quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction;
- Waste that is generated is recycled to the maximum extent practicable; and
- Any wastes remaining are stored, treated, or disposed of in a manner protective of public health and the environment.

Executive Order 12856 requires Federal agencies to comply with the requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109). EPCRA establishes programs to provide the public with important information on the hazardous and toxic chemicals in their communities and emergency planning and notification requirements to protect the public in the event of release of extremely hazardous substances. The order requires Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification. Facilities that are subject to EPCRA are required to provide information and reports to EPA and state and local groups. Five distinct reporting requirements are contained in EPCRA. Each of these reporting requirements and other facility responsibilities under EPCRA and Executive Order 12856 are described in chapter 30–60.

The PPA establishes national policy that pollution is to be prevented or reduced at the source. The Act also requires the reporting of efforts to reduce toxic chemical releases through source reduction and recycling. The PPA reporting requirement and other facility responsibilities under the PPA and Executive Order 12856 are described in chapter 30–70

Executive Order 12856 also places other responsibilities on federal agencies that are not contained in EPCRA or PPA. It requires Federal agencies to develop voluntary goals to reduce total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal; a pollution prevention strategy and plan; a plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals; and a plan and goals for voluntarily reducing agency manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. These additional responsibilities under Executive Order 12856 are described in this chapter.

30–80–05 Applicability

A. *Covered Facilities.* Executive Order 12856 is applicable to all OPDIVs/STAFFDIVs that either own or operate a ''facility'' as that term is defined in EPCRA section 329(4) (42 U.S.C. § 11049(4)), if such facility meets EPCRA's threshold requirements for compliance. Each of the threshold requirements for EPCRA compliance are discussed in chapter 30–60. The statutory definition of ''facilities'':

> all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

EPA regulations revise the statutory definition of facility to include ''manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' (40 CFR 355.20, 370.2). The purpose of the revision was to clarify that the definition applies to certain subsurface structures.

Each OPDIV/STAFFDIV must apply all of the provisions of Executive Order 12856 to each of its covered facilities, including those facilities which are subject, independent of the Executive Order, to the provisions of EPCRA (e.g., certain government-owned/contractor-operated facilities (GOCOS)).

Executive Order 12856 does not apply to Federal agency facilities outside the customs territory of the United States. EPA may be consulted to determine the applicability of Executive Order 12586 to particular OPDIV/STAFFDIV facilities.

B. *Preliminary List of Covered Facilities.* The Secretary was required by Executive Order 12856 to provide the EPA Administrator by December 31, 1993, with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and Executive Order 12856.

30–80–10 Responsibilities

The head of each OPDIV/STAFFDIV is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that organization's activities and facilities, and for ensuring compliance with the appropriate pollution prevention and emergency planning and community right-to-know provisions of the PPA and EPCRA. To the maximum extent practicable, the head of each OPDIV/STAFFDIV shall strive to comply with the purposes, goals, and implementation steps set forth in Executive Order 12856.

HHS Headquarters has developed the Pollution Prevention Strategy. The head of each OPDIV/STAFFDIV with facilities covered by the Executive Order must ensure that the organization develops, consistent with the HHS Pollution Prevention Strategy,:

1. Voluntary goals to reduce the organization's total releases of toxic chemicals to the environmental and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by Executive Order 12856;

2. A written pollution prevention plan;

3. A plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals;

4. A plan and goals for voluntarily reducing manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

The OPDIV/STAFFDIV shall submit progress reports, conduct internal reviews and audits, and take such other steps as may be necessary to monitor compliance with the requirements of this chapter and Executive Order 12856. The head of each OPDIV/STAFFDIV with facilities covered by the Executive Order shall also place high priority on obtaining funding and resources needed for implementing all aspects of this chapter and Executive Order 12856.

30–80–15 Definitions

Executive Order 12856 incorporates by reference all definitions found in EPCRA and PPA and implementing regulations (except the term ''person'', as defined in section 329(7) (42 U.S.C. 11049(7)) of EPCRA, also includes Federal agencies). The following definitions are used in this chapter and chapters 30–60 and 30–70:

A. *Extremely Hazardous Substance.* An ''extremely hazardous substance'' is defined in EPCRA section 329(3) (42 U.S.C. 11049(3)) and EPA regulations in 40 CFR 355.20 to mean a substance that is listed in Appendices A (in alphabetical order) and B (by CAS number) of 40 CFR part 355.

B. *Pollution Prevention.* Pollution prevention is defined in section 2–203 of Executive Order 12856 to mean ''source reduction,'' as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through:

- Increased efficiency in the use of raw materials, energy, water, or other resources; or
- Protection of natural resources by conservation.

EPA has issued a Statement of Definition of Pollution Prevention that is identical to the definition in Executive Order 12856 (Memorandum from F. Henry Habicht II, Deputy Administrator, Environmental Protection Agency, Subject: EPA Definition of ''Pollution Prevention'', to All EPA Personnel (May 28, 1992)). The Statement of Definition explains that recycling, energy recovery, treatment, and disposal are not included within EPA's definition of pollution prevention. In distinguishing between prevention of pollution and recycling, EPA includes ''in-process recycling'' within the definition of ''pollution prevention.'' ''Out-of-process recycling'' is part of recycling and is not part of the definition. The Statement of Definition also comments that recycling that is conducted in an environmentally sound manner shares many of the advantages of prevention—it can reduce the need for treatment or disposal, and conserve energy and resources.

Note: A different definition of pollution prevention is used in guidance from the Council on Environmental Quality in NEPA matters (see 30–50–50).

C. *Source Reduction.* ''Source reduction'' is defined in PPA section 6603(5) (42 U.S.C. 13102(5)) to mean any practice that:

- Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

The term ''source reduction'' does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to and necessary for producing a product or providing a service.

D. *Toxic Chemical.* Toxic chemical means a substance on the list described in section 313(c) of EPCRA (42 U.S.C. 11023(c)) and contained in 40 CFR 372.65 (see 30–60–70).

E. *Toxic Pollutants.* Under the provisions of section 313 of EPCRA as of December 1, 1993 (see 30–60–70), OPDIVs/STAFFDIVs may choose to include releases and transfers of other chemicals, such as:

- An ''extremely hazardous substance'' as defined in section 329(3) of EPCRA (42 U.S.C. 11049(3)) and listed in 40 CFR part 355, Appendices A & 8 (see 30–60–20 and –30);
- A ''hazardous waste'' under section 3001 of RCRA (42 U.S.C. 6921) as defined in 40 CFR 261.3 (see section 30–00–30); or
- A ''hazardous air pollutant'' listed under section 112(b) of the Clean Air Act (42 U.S.C. 7412(b)) (see 30–00–30).

For the purposes of establishing the OPDIV/STAFFDIV baseline under subsection C of section 30–80–30, such ''other chemicals'' are in addition to (not instead of the EPCRA section 313 chemicals. The term ''toxic pollutants'' does not include hazardous waste subject to remedial action generated prior to August 3, 1993.

30–80–20 Pollution Prevention Strategy

A. *Achievement of Executive Order 12856 Requirements.* The HHS Pollution Prevention Strategy was developed to achieve the following requirements specified in sections 3–302 through 3–305 of Executive order 12856:

1. *Toxic Chemical Release Reduction Goals.* Voluntary goals to reduce the Department's total releases of toxic chemicals or toxic pollutants to the environment and off-site transfers of such toxic chemicals or toxic pollutants for treatment and disposal from facilities covered under Executive order 12856 by 50 percent by December 31, 1999, utilizing, to the maximum extent practicable, source reduction practices.

2. *Acquisition and Procurement Goals and Plans.* Plans and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals and a plan and goal for voluntarily reducing manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

3. *Toxic Chemical Release Inventory and Pollution Prevention Act Reporting.* Compliance with the provisions in EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106) and all implementing regulations.

4. *Emergency Planning and Community Right-to-Know Reporting Responsibilities.* Compliance with the provisions set forth in sections 301 through 312 of EPCRA (42 U.S.C. 11001–11022) and all implementing regulations.

B. *Strategy Contents.* The Pollution Prevention Strategy includes the following elements.

1. *Pollution Prevention Policy Statement.* The HHS Pollution Prevention Strategy contains a Pollution Prevention Policy Statement that reflects the Department's commitment to incorporate pollution prevention through source reduction in facility management and acquisition. The statement designates principal responsibilities for development, implementation, and evaluation of the strategy. The statement also identifies an individual responsible for coordinating the Department's efforts in pollution prevention.

2. *Source Reduction Commitment.* The Pollution Prevention Strategy commits the Department to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable federal, state, and local environmental requirements.

3. *Executive Order 12856 Achievement Plan.* The strategy contains plans for achieving the requirements specified in sections 3–302 through 3–305 of Executive Order 12856, as summarized in subsection A of this section.

30–80–30 Toxic Chemical Reduction Goals

A. *OPDIV/STAFFDIV Toxic Chemical Release Reduction Goals.* Each OPDIV/STAFFDIV having facilities covered by Executive Order 12856 shall develop voluntary goals to reduce total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

B. *Baseline Measurement.* The baseline for measuring reductions for purposes of achieve the 50 percent reduction goal in subsection A of this section for each OPDIV/STAFFDIV is the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount to which the 50 percent reduction goal applies is the aggregate amount of toxic chemicals reported in the baseline year for all of that OPDIV/STAFFDIV's covered facilities. In no event shall the baseline be later than the 1994 reporting year.

C. *Alternate Toxic Pollutants Reduction Goal.* As an alternative to a 50 percent reduction goal for toxic chemicals, an OPDIV/STAFFDIV may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the OPDIV/STAFFDIV shall delineate the scope of its reduction program in the written pollution plan that is required by section 30–80–40. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each OPDIV/STAFFDIV shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that OPDIV/STAFFDIV's facilities encompassed by its pollution prevention plan. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the OPDIV/STAFFDIV in the baseline year. For any toxic pollutants included by the OPDIV/STAFFDIV in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the OPDIV/STAFFDIV shall report on such toxic pollutants annually as part of its toxic chemical release inventory report (see 30–60–70), if practicable, or through a report that is made available to the public.

30–80–40 Pollution Prevention Plan

A. *Pollution Prevention Plan.* The head of each OPDIV/STAFFDIV shall ensure that each of its covered facilities develops a written Pollution Prevention Plan. Each facility plan shall set forth the facility's contribution to the OPDIV's/STAFFDIV's toxic chemical reduction goals (see 30–90–30).

B. *Facility Assessments.* OPDIVs/STAFFDIVs shall conduct assessments of their facilities as necessary to ensure development of facility pollution prevention plans and pollution prevention programs.

30–80–50 Acquisition and Procurement Plans and Goals

A. *Plans and Goals*

1. *Toxic Chemical Acquisition Reduction Plan and Goals.* Each OPDIV/STAFFDIV shall establish a plan and goals for eliminating or reducing the unnecessary acquisition of products containing extremely hazardous substances or toxic chemicals.

2. *Toxic Chemical Use Reduction Plan and Goal.* Each OPDIV/STAFFDIV shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals.

B. *Specifications and Standards Review.* OPDIVs/STAFFDIVs shall also review (in coordination with GSA, EPA, and other Federal agencies where appropriate) their standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their missions. All appropriate revisions to these specifications and standards shall be made by 1999.

C. *Coordination with EPA.* Each OPDIV/STAFFDIV shall establish priorities for implementing this section in coordination with EPA.

D. *Innovative Pollution Prevention Technologies.* OPDIVs/STAFFDIVs are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy, innovative environmental technologies for domestic use and for markets abroad.

30–80–60 EPCRA and Pollution Prevention Act Responsibilities

A. *Emergency Planning and Community Right-to-Know Responsibilities.* The head of each OPDIV/STAFFDIV is responsible for assuring compliance with the provisions set forth in sections 301 through 312 of EPCRA (42 U.S.C. 11001–11022). Procedures for complying with these requirements are contained in chapter 30–60.

B. *Toxic Chemical Release Inventory and Pollution Prevention Act Reporting.* The head of each OPDIV/STAFFDIV is responsible for assuring compliance with the reporting requirements set forth in EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). Procedures for complying with these reporting requirements are contained in chapters 30–60 and 30–70. In accordance with Executive Order 12856, each OPDIV/STAFFDIV shall comply with these reporting requirements without regard to the Standard Industrial Classification (SIC) delineations that apply to the organization's facilities, and such reports shall be for all releases, transfers, and wastes at such facilities without regard to the SIC code of the activity leading to the release, transfer, or waste.

30–80–70 Compliance

A. *Scope of Compliance.* Executive Order 12856 provides that compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person.

B. *Internal Reviews.* OPDIVs/STAFFDIVs shall conduct internal reviews and audits, and take such other steps as may be necessary, to monitor compliance with the requirements of this chapter and Executive Order 12856, including conducting assessments of their facilities to ensure development of facility pollution prevention plans and pollution prevention programs.

C. *Annual Progress Reports*

1. *HHS Annual Report to EPA.* The Secretary will submit annual progress report to the EPA Administrator beginning on October 1, 1995. These reports will include a description of the progress that has been made in complying with all aspects of Executive Order 12856, including pollution reduction requirements. This reporting requirement expires after the report due on October 1, 2001. All OPDIVs/STAFFDIVs must institute procedures that will permit timely progress reporting by OPDIV/STAFFDIV facilities and the gathering of information for the Secretary's report.

2. *EPA Annual to President.* Executive Order 12856 requires EPA to submit an annual report to the President on Federal agency compliance with toxic chemical release inventory reporting under EPCRA section 313 and toxic chemical source reduction and recycling reporting under PPA section 6607 (see chapters 30–60 and 30–70). All OPDIVs/STAFFDIVs must institute procedures that will permit timely progress reporting to EPA for its report to the President.

D. *Contractor Reporting Responsibilities.* To facilitate compliance with Executive Order 12856, OPDIVs/STAFFDIVs shall provide, in all future contracts between the organization and its relevant contractors, for the contractor to supply to the OPDIV/STAFFDIV all information that the OPDIV/STAFFDIV deems necessary for it to coply with the order. In addition, to the extent that compliance with Executive Order 12856 is made more difficult due to lack of information from existing contractors, OPDIVs/STAFFDIVs shall take practical steps to obtain the information needed to comply with the order from such contractors. Although Executive Order 12856 does not alter the obligations which GOCOs have under EPCRA and PPA independent of the order or subjects such facilities to EPCRA or PPA if they are otherwise excluded, the releases and transfers from all such facilities are to be included when meeting all of the OPDIV's/STAFFDIV's responsibilities under Executive Order 12856.

E. *Technical Assistance for EPA.* OPDIVs/STAFFDIVs are encouraged to request technical advice and assistance from EPA in order to foster full compliance with Executive Order 12856 and this chapter.

F. *Technical Assistance to Local Emergency Planning Committees.* OPDIVs/STAFFDIVs shall provide technical assistance, if requested, to local emergency planning committees in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities (see 30–60).

G. *EPA Review.* Executive Order 12856 provides that the Administrator of EPA, in consultation with the Secretary, may conduct such reviews and inspections as may be necessary to monitor compliance with HHS responsibilities under EPCRA (see 30–60) and the PAA (see 30–70). OPDIVs/STAFFDIVs are to cooperate fully with the efforts of the Administrator to ensure compliance with Executive Order 12856. Should the Administrator notify an OPDIV/STAFFDIV that it is not in compliance with an applicable provision of Executive Order 12856, the OPDIV/STAFFDIV shall achieve compliance as promptly as is practicable.

H. *State and Local Right-to-Know Requirements.* OPDIVs/STAFFDIVs are encouraged to comply with all State and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

I. *Exemption for Particular Federal Facilities.* Section 6–601 of Executive Order 12856 provides that the head of a Federal agency may request from the President, in the interest of national security, an exemption from complying with the provisions of any or all aspects of the order for particular Federal agency facilities, provided that the procedures set forth in CERCLA section 1200)(1) (42 U.S.C. 9620(j)(1)) are followed.

30–80–80 Public Availability of Information

To the extent permitted by law, and unless such documentation is withheld pursuant to section 6–601 of Executive Order 12856, the public shall be provided ready access to all strategies, plans, and reports required to be prepared by the Department or an OPDIV/STAFFDIV under Executive Order 12856. OPDIVs/STAFFDIVs are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

30–80–90 Funding and Resources

Each OPDIV/STAFFDIV shall place high priority on obtaining funding and resources needed for implementing all aspects of this chapter and Executive Order 12856, including the pollution prevention strategies, plans, and assessments required by Executive Order 12856, by identifying, requesting, and allocating funds through line-item or direct funding requests. OPDIVs/STAFFDIVs are to make such budget requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through budget requests as outlined in Office of Management and Budget (OMB) Circular A–11. OPDIVs/STAFFDIVs should apply, to the maximum extent practicable, a life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this chapter and Executive Order 12856.

HHS Chapter 30–90—General Administration Manual; HHS Transmittal 98.2

Subject: Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition

30–90–00 Background

A. *Executive Order 13101.* Executive Order 13101 requires Federal agencies to strive to increase the procurement of products that are environmentally preferable or that are made with recovered materials and to set goals to maximize the number of recycled

products purchased, relative to non-recycled alternatives. Each agency is to establish either a goal for solid waste prevention and for recycling or a goal for solid waste diversion. It is the national policy to prefer pollution prevention, whenever feasible.

Each Executive agency is to initiate a program, compatible with State and local requirements, to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. Federal agencies are also to consider cooperative ventures with State and local governments to promote recycling, and waste reduction in the community. The order directs that in acquisition planning and in the evaluation and award of contracts, agencies are to consider, among other factors, use of recovered materials, life cycle costs, and recyclability. Each Executive department and major procuring agency must establish model facility demonstration programs that include comprehensive waste prevention and recycling programs and emphasize the procurement of recycled and environmentally preferable products and services. A government-wide award will be presented annually by the White House to the best, most innovative program implementing the objectives of Executive Order 13101 to give greater visibility to these efforts so that they can be incorporated government-wide.

The Executive Order creates a Federal Environmental Executive and establishes high-level Environmental Executive positions within each agency to be responsible for expediting the implementation of the order and statutes that pertain to the Order.

Executive Order 13101 was effective immediately upon its issuance by the President on September 14, 1998. Executive Order 13101 revokes Executive Order 12873, dated October 20, 1993.

B. *Resource Conservation and Recovery Act of 1976 (RCRA).* Executive Order 13101 requires Federal agencies to comply with the sections of RCRA that cover Federal procurement of recycled products. Section 6002(c)(1) of RCRA (42 U.S.C. 6962(c)(1)) imposes a duty on Federal agencies to procure items ''composed of the highest percentage of recovered materials practicable * * * consistent with maintaining a satisfactory level of competition. * * *'' The Administrator of the Environmental Protection Agency (EPA) is required by Section 6002 to develop guidelines that designate those items which are or can be produced with recovered materials and set forth recommended practices with respect to the procurement of recovered materials and items containing such materials. To assist procuring agencies in complying with the requirements of section 6002, EPA has issued guidelines for the Federal procurement of building insulation products containing recovered materials, cement and concrete containing fly ash, paper and paper products containing recovered materials, lubricating oils containing re-refined oil, and retread tires (see 40 CFR part 247).

RCRA 6002 also requires each procuring agency to develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

C. *OFPP Policy Letter 92–4.* RCRA section 6002 (42 U.S.C. 6962) requires the Office of Federal Procurement Policy (OFPP) to issue coordinated policies to maximize Federal use of recovered material. Executive Order 13101 requires Federal agencies, consistent with policies established by OFPP Policy Letter 92–4 (57 FR 53362 (1992)), to comply with executive branch policies for the acquisition and use of environmentally preferable products and services and to implement cost-effective procurement preference programs favoring the purchase of these products and services. OFPP Policy Letter 92–4, establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. The OFPP Policy Letter also provides guidance to be followed by Executive agencies in implementing section 6002 of RCRA.

The OFPP Policy Letter requires the implementation of cost-effective procurement preference programs for the purchase of environmentally-sound, energy-efficient products and services. It applies to Federal executive agencies that use appropriated Federal funds for procurement purposes. The Policy Letter provides direction for developing affirmative procurement programs and for the procurement of paper containing post-consumer waste. The letter also implements the Energy Policy and Conservation Act, 42 U.S.C. 6201–6422, and two Executive Orders.

Policy Letter 92–4 directs executive agencies to consider energy conservation and efficiency factors in the procurement of property and services. It also requires Federal agencies to give preference in their procurement programs to practices and products that conserve natural resources and protect the environment. Energy conservation and efficiency data are to be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions.

The Policy Letter is intended to apply to all products and services. There are differing requirements for the guideline items than for other items.

30–90–05 Applicability

A. *OPDIV/STAFFDIVs.* Consistent with the demands of efficiency and cost effectiveness, the head of each OPDIV/STAFFDIV shall incorporate waste prevention and recycling in the organization's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. Consistent with policies established by Office of Federal Procurement Policy (''OFPP'') Policy Letter 92–4, OPDIVs/STAFFDIVs shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

B. *Contractor Operated Facilities.* Contracts that provide for contractor operation of a government-owned or leased facility and/or contracts, awarded after the effective date of Executive Order 13101, shall include provisions that obligate the contractor to comply with the requirements of the order within the scope of its operations. In addition, to the extent permitted by law and where economically feasible, existing contracts should be modified to include provisions that obligate the contractor to comply with the requirements of Executive Order 13101.

C. *Real Property Acquisition and Management.* Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, OPDIVs/STAFFDIVs shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. Agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

D. *Retention of Funds.* The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

E. *Agencies in non-GSA Managed Facilities.* OPDIVs/STAFFDIVs, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

F. *Model Facility Programs.* Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

G. *Recycling Programs.* Each OPDIV/STAFFDIV shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans. Agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

30–90–10 Responsibilities

The head of each OPDIV/STAFFDIV shall develop and implement to the maximum extent practicable affirmative procurement programs in accordance with RCRA section 6002 (42 U.S.C. 6962) and Executive Order 13101.

The head of each OPDIV/STAFFDIV shall ensure that the organization meets or exceeds minimum materials content standards when purchasing or causing the purchase of printing and writing paper.

30–90–15 Definitions

A. ''Acquisition'' means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when HHS organization needs are established and includes the description of requirements to satisfy organization needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling organization needs by contract

B. ''Environmentally preferable'' means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

C. ''Life Cycle Cost'' means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

D. ''Life Cycle Assessment'' means the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

E. ''Postconsumer material'' means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. ''Post-consumer material'' is a part of the broader category of ''recovered material''.

F. ''Recovered materials'' means waste materials and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Manufacturing, forest residues, and other wastes also fit within the definition of ''recovered materials''. Such wastes include dry paper and paperboard waste generated after completion of the paper-making process; finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others; fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes; wastes generated by the conversion of goods made from fibrous material; and fibers recovered form waste water which otherwise would enter the wastestream.

G. ''Recyclability'' means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

H. ''Recycling'' means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

I. ''Waste prevention'' means any change in the design, manufacturing, purchase or use of materials or products (including packaging) to reduce their amount or toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

J. ''Waste reduction'' means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

K. ''Pollution prevention'' means ''source reduction'' as defined in the Pollution Prevention Act of 1990, and other practices that reduce or eliminate the creation of pollutants through: (a) Increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

L. ''Biobased product'' means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

M. ''Major procuring agencies'' shall include any executive agency that procures over $50 million per year of goods and services.

30–90–20 Roles of the Federal Environmental Executive and Agency Environmental Executives

A. *Federal Environmental Executive.* The Federal Environmental Executive is designated by the President and is located within the Environmental Protection Agency (''EPA''). The Federal Environmental Executive is authorized to take all actions necessary to ensure that Federal agencies comply with the requirements of Executive Order 13101. The Federal Environmental Executive's responsibilities include:

Identifying and recommending initiatives for government-wide implementation that will promote the purposes of Executive Order 13101, including:

(a) The development of a government-wide Waste Prevention and Recycling Strategic Plan for implementation of Executive Order 13101 and appropriate incentives to encourage the acquisition of recycled and environmentally preferable products by the Federal Government,

(b) Chairing the Task Force under the steering committee established by Executive Order 13101, and

(c) Preparing a biennial report on this Order.

The Federal Environmental Executive will establish committees and work groups to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the Federal Environmental Executive. As these committees and work groups are created, OPDIVs/STAFFDIVs may be requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, waste prevention, and recycling, and others as needed to staff and work on the initiatives of the Executive. OPDIVs/STAFFDIVs shall make their services, personnel and facilities available to the Federal Environmental Executive to the maximum extent practicable for the performance of functions under Executive Order 13101.

B. *HHS Environmental Executive.* Executive Order 13101 requires the Secretary to designate an Agency Environmental Executive, who serves at a level no lower than at the Assistant Secretary level or equivalent. The Agency Environmental Executive is responsible for:

1. Translating the Government-wide State Plan into specific agency and service plans;

2. Implementing the specific agency and service plans;

3. Reporting to the Federal Environmental Executive (FEE) on the progress of plan implementation;

D. Working with the FEE and the Task Force in furthering implementation of this order;

E. Tracking agencies' purchases of EPA-designated guideline items and reporting agencies' purchases of such guideline items to the FEE per the recommendations developed in this Order. Agency acquisition and procurement personnel shall justify in writing to the file and the Agency Environmental Executive (AEE) the rationale for not purchasing such items, above the micropurchase threshold, and submit a plan and timetable for increasing agency purchases of the designated items(s);

F. One year after a product is placed on the USDA Biobased Products List, estimating agencies' purchases of products on the list and reporting agencies' estimated purchases of such products to the Secretary of Agriculture; and

G. Reviewing Departmental programs and acquisitions to ensure compliance with this Order.

30–90–30 Acquisition Planning and Affirmative Procurement Programs

A. *Acquisition Planning.* In developing plans, drawings, work statements, specifications, or other product descriptions, OPDIVs/STAFFDIVs shall consider, as appropriate, a broad range of actors including:

—Elimination of virgin material requirements;
—Use of recovered materials;
—Reuse of product;
—Life cycle cost;
—Recyclability;
—Use of environmentally preferable products;
—Waste prevention (including toxicity reduction or elimination); and
—Ultimate disposal, as appropriate.

These factors should be considered in acquisition planning for all procurements and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

B. *OPDIV/STAFFDIV Responsibilities.* In accordance with OFPP Policy Letter 924, OPDIVs/STAFFDIVs shall:

1. Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient;

2. Procure products, including packaging, that contain the highest percentage of recovered materials, and where applicable, post-consumer waste, consistent with performance requirements, availability, price reasonableness, and cost effectiveness;

3. Employ life cycle cost analysis, wherever feasible and appropriate, to assist in making product and service selections;

4. Use product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, water efficiency devices, remanufactured products and energy-efficient products, materials and practices;

5. Work with private standard setting organizations and participate, pursuant to OMB Circular No. A–119, in the development of voluntary standards and specifications defining environmentally-sound, energy-efficient products, practices and services;

6. Require vendors to certify the percentage of recovered materials used, when contracts are awarded wholly or in part on the basis of utilization of recovered materials;

7. Assure, when drafting or reviewing specifications for required items, that the specifications:

(a) do not exclude the use of recovered materials;

(b) do not unnecessarily require the item to be manufactured from virgin materials; and

(c) require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended end use of the item; and

8. Arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery. OPDIVs/STAFFDIVs that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuel derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

C. *Affirmative Procurement Programs.* RCRA section 6002(i) (42 U.S.C. 6962(i)) requires the development of an affirmative procurement program for each item that is covered by an EPA guideline. The affirmative procurement program is to assure that items composed of recovered materials will be purchased to the maximum extent practicable, consistent with applicable provisions of Federal procurement law.

1. OPDIVs/STAFFDIVs shall establish affirmative procurement programs for each of the items covered by guidelines developed by the Environmental Protection Agency pursuant to subsection 6002(e) of RCRA (see 40 CFR 247). For newly designated items, OPDIVs/STAFFDIVs shall revise their internal programs within one year from the date EPA designated the new items. OPDIVs/STAFFDIVs shall ensure that responsibilities for preparation, implementation and monitoring of affirmative procurement programs are shared between program personnel and procurement personnel. The responsibility to establish an affirmative procurement program applies only to purchases of guideline items costing $10,000 or more or where the quantity of such items, or of functionally-equivalent items, acquired in the course of the preceding year was $10,000 or more.

2. For designated EPA guideline items, excluding biobased products as described in this Executive Order, OPDIVs/STAFFDIVs shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a

product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

3. *Program Elements.* Each OPDIVs/STAFFDIVs affirmative procurement program, at a minimum, must comply with RCRA subsection 6002(i) and must:

(a) State a preference for the procurement of the item covered by the EPA guideline;

(b) Promote the cost-effective procurement of the covered item;

(c) Require estimates of the total amount of the recovered item used in a contract, certification of the minimum amount actually used, where appropriate, and procedures for verifying the estimates and certifications;

(d) Provide for the annual review and monitoring of the effectiveness of the program; and

(e) Include one of the following options, or a substantially equivalent alternative, to insure that contracts for items covered by the guidelines are awarded, unless a waiver is granted, on the basis of:

- Case-by-case procurement, open competition between products made of virgin materials and products containing recovered materials; preference to be given to the latter, or
- Minimum-content standards, which identify the minimum content of recovered materials that an item must contain to be considered for award.

4. *Waiver.* OPDIVs/STAFFDIVs are to base decisions to waive, or not to procure, EPA guideline items composed of the highest percentages of recovered materials practicable on a determination that such items:

(a) Are not reasonably available within the time required;

(b) Fail to meet the performance standards set forth in applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(c) Are only available at an unreasonable price.

5. The Agency Environmental Executive will track purchases of designated EPA guideline items and report purchases of such guideline items to the Federal Environmental Executive when requested.

A. Agencies shall implement the EPA procurement guidelines for rerefined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

B. The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

30–90–40 Agency Goals and Reporting Requirements

Each OPDIVs/STAFFDIV shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this Order.

In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for re-manufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

30–90–50 Standards, Specifications and Designation of Items

A. *Designation of Items that Contain Recovered Materials.* EPA shall designate Comprehensive Procurement Guidelines containing designated items that are or can be made with recovered materials. OPDIVs/STAFFDIVs shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guideline standards unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Concurrently with the issuance of the Comprehensive Procurement Guideline, EPA will publish Recovered Materials Advisory Notice(s) that present the range of recovered material content levels within which the designated recycled items are currently available. These levels will be updated periodically to reflect changes in market conditions.

B. *Guidance for Environmentally Preferable products.* In accordance with Executive Order 13101, EPA will issue guidance that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products. OPDIVs/STAFFDIVs are to use this guidance, to the maximum extent practicable, in identifying the purchasing environmentally preferable products and shall modify their procurement programs by reviewing and revising specifications, solicitation procedures, and policies as appropriate. OPDIVs/STAFFDIVs may develop pilot projects to provide practical information to the EPA for further updating of the guidance.

C. *Designation of Biobased Items by the USDA.* The USDA Biobased Products Coordination Council, shall, in consultation with the FEE, issue a Biobased Products List. The biobased Products List shall be published in the **Federal Register** by the USDA within 180 days after the date of this Order and shall be updated biannually after publication to include additional items. Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

D. *Minimum Content Standard for Printing and Writing Paper.* Heads of OPDIVs/STAFFDIVs heads shall ensure their organizations meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper.

1. For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent post-consumer materials beginning December 31, 1998. If paper containing 30 percent post-consumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent post-consumer material. The Steering Committee in consultation with the AEEs, may revise these levels if necessary.

2. As an alternative to meeting the foregoing standards for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished

product other that a paper or textile product which would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

E. Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

30–90–60 Recycling and Recycling Awareness Programs

A. *Recycling Program*. Each OPDIVs/STAFFDIV shall designate a recycling coordinator for each facility or installation. Each OPDIVs/STAFFDIVs shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. Each facility recycling program must be compatible with applicable State and local recycling requirements. Each facility shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

B. *Awards Programs*. Each OPDIV/STAFFDIV shall develop an internal awards program, as appropriate, to reward its most innovative environmental programs. Winners of OPDIV/STAFFDIV awards will be eligible for annual HHS and White House awards programs. The White House will annually present an award to the best, most innovative program implementing the objectives of Executive Order 13101.

C. *Model Facility Programs*. Executive order 13101 requires HHS to establish a model facility demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composing organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

30–90–70 Real Property Acquisition and Management

Each OPDIV/STAFFDIV, to the extent permitted by law and where economically feasible, shall ensure compliance with the provisions of Executive Order 13101 in the acquisition and management of Federally owned and leased space. Environmental and recycling provisions shall be included in the acquisition of all leased space and in the construction of new Federal buildings.

30–90–80 Training

Each OPDIV/STAFFDIV shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this Order.

30–90–90 Compliance

Review of Implementation. The HHS Inspector General, at the request of the President's Council on Integrity and Efficiency (PCIE), will periodically review OPDIVs'/STAFFDIVs' affirmative procurement programs and reporting procedures to ensure their compliance with Executive order 13101.

[FR Doc. 99–9 Filed 1–8–99; 8:45 am]

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Federal Register

Monday
January 11, 1999

Part III

Department of Education

Office of Special Education and Rehabilitative Services; Office of Special Education Programs; Inviting Applications for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Office of Special Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On January 4, 1999, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act Amendments of 1997 was published in the **Federal Register** (64 FR 351). The notice contained a ''chart'' that provided closing dates and other information regarding the transmittal of applications for the Fiscal Year 1999 competitions. The chart inadvertently listed ''1998'' dates. This notice corrects the chart (64 FR 361) with the correct ''1999'' dates.

FOR FURTHER INFORMATION CONTACT: For further information on this priority contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra__Sturdivant@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 1999

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated number of awards
84.324D Directed Research Projects	1/15/99	3/8/99	5/7/99	$180,000	Up to 36 mos ...	50	.....
Focus 1—Inclusion of Students with Disabilities in Large-Scale Assessment Programs.	.....	.....	.....	.....	.....	.....	3
Focus 2—Instructional Interventions and Results for Children with Disabilities.	.....	.....	.....	.....	.....	.....	12
Focus 3—Early Prescriptive Assessment of Children with Learning or Emotional Disabilities.	.....	.....	.....	.....	.....	.....	4
Focus 4—Improving the Delivery of Early Intervention, Special Education or Related Services to Children with Disabilities from High Poverty Backgrounds.	.....	.....	.....	.....	.....	.....	3
84.324T Model Demonstration Projects	1/15/99	3/1/99	4/30/99	180,000	Up to 48 mos ...	40	.....
Focus 1—Instructional Models to Improve Early Reading Results for Children with Learning Disabilties.	.....	.....	.....	.....	.....	.....	3
Focus 2—Appropriate Services for Children with Deaf-Blindness.	.....	.....	.....	.....	.....	.....	3
Focus 3—Local or State Child Find ...	.....	.....	.....	.....	.....	.....	3
Focus 4—Services Through Age 21 ..	.....	.....	.....	.....	.....	.....	3
84.324S Research Institute to Improve Results for Adolescents with Disabilities in General Education Academic Curricula.	1/15/99	3/1/99	4/30/99	700,000	Up to 60 mos ...	75	1
84.325P Partnerships to Link Personnel Training and School Practice.	1/15/99	3/1/99	4/30/99	300,000	Up to 60 mos ...	50	4
84.326U National Clearinghouse on Deaf-Blindness.	1/15/99	3/8/99	5/7/99	400,000	Up to 60 mos ...	40	1
84.327L Closed Captioned Television Programs—Local News and Public Information.	1/15/99	3/1/99	4/30/99	80,000	Up to 36 mos ...	40	10
84.327F Closed Captioned Spanish TV Programs.	1/15/99	3/1/99	4/30/99	200,000	Up to 36 mos ...	40	3

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority and competition description in this notice. The Secretary rejects and does not consider an application that does not adhere to this requirement.

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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**.

Dated: January 5, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–475 Filed 1–8–99; 8:45 am]

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Federal Register

Vol. 64, No. 6

Monday, January 11, 1999

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
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210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
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700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
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1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
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51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
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14 Parts:			
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15 Parts:			
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141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
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20 Parts:			
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400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
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22 Parts:			
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26 Parts:			
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29 Parts:			
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700–End	(869–034–00111–4)	33.00	July 1, 1998
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35	(869–034–00126–2)	14.00	July 1, 1998
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200–299	(869–034–00128–9)	21.00	July 1, 1998
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166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.