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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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WHEN: June 23 at 9:00 am
WHERE: Office of the Federal Register
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–24 of May 16, 1994

Theater Missile Defense Cooperation With the Allies

Memorandum for the Secretary of Defense

1. Pursuant to the authority vested in me by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, I hereby certify that the Director, Ballistic Missile Defense Organization, has formally submitted to representatives of the member nations of the North Atlantic Treaty Organization and Japan, Israel, and South Korea a proposal concerning coordination of the development and implementation of U.S. Theater Missile Defense (TMD) programs with TMD programs of our friends and allies.

2. You are authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 16, 1994.

[FR Doc. 94–13691
Filed 6–1–94; 2:34 pm]
Billing code 5000–04–M

Rules and Regulations

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0773]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation H to allow a state member bank that meets certain conditions to invest in its premises in an amount up to 50 percent of its Tier 1 capital without obtaining specific approval. The Board believes that a general approval for a state member bank to invest an amount not exceeding 50 percent of its Tier 1 capital is appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Manley Williams, Attorney (202/736–5565), Legal Division; Richard Fabrizio, Senior Financial Analyst (202/452–3423); Beverly Evans, Supervisory Financial Analyst (202/452–2573); John Russell, Manager (202/452–2466), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 24A of the Federal Reserve Act, 12 U.S.C. 371d, requires a state member bank to obtain the approval of the Board to invest in the bank's premises if the aggregate level of direct and indirect investment in its premises will exceed the bank's capital stock account. Section 24A applies

(1) To investments in bank premises and to investments in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank,

(2) To the making of loans to or upon the security of the stock of any such corporation; and

(3) To the indebtedness incurred by any corporation that is an affiliate of the bank.

The Board is amending Regulation H to allow a state member board that meets certain conditions to invest in bank premises in an amount that exceeds its capital stock account but not exceeding 50 percent of its Tier 1 capital without obtaining specific approval for the investment. Prior to this amendment, a state member bank was required to obtain Board approval for each investment in bank premises if the aggregate investment exceeded, or would exceed, the capital stock account of the state member bank.

The Board believes that investments by a state member bank in bank premises in an amount in excess of its stock account but not exceeding 50 percent of the bank's Tier 1 capital generally do not present any significant risks to the bank if the bank is well capitalized, is rated CAMEL "1" or "2", and is not subject to any written agreement, cease and desist order, capital directive. The Board believes that a general approval for a state member bank to invest an amount not exceed 50 percent of its Tier 1 capital its appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden. The amendment does not affect state member banks' ability to invest in bank premises, without conditions, up to the amount of their capital stock account.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of this amendment because the changes relate to rules of agency organization, procedure, or practice.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment will reduce the regulatory burden for many small depository institutions by relieving them of the requirement to file an application in certain cases, and will have no effect in other cases.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (Regulation H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 1(b), 1(g), 1(i), 78b, 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. Section 208.22 is added to subpart A read as follows:

§ 208.22 Investment in bank premises.

(a) Under Section 24A of the Federal Reserve Act, state member bank investments in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, and loans on the security of the stock of such corporation, do not require the approval of the Board if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a):

(1) Does not exceed the capital stock account of the bank; or

(2) Does not exceed 50 percent of the bank's Tier 1 capital and the bank:

(i) Is well capitalized as defined in § 208.33(b)(1) of this part;

(ii) Received a composite CAMEL rating of "1" or "2" as of its most recent examination by the relevant Federal

Reserve Bank or state regulatory authority; and

(iii) Is not subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive issued by the Board or a Federal Reserve Bank.

By order of the Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13253 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-96; Special Conditions No. 25-ANM-85]

Special Conditions: Modified AMD/BA Falcon 50 Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for AMD/BA Falcon 50 series airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 24, 1994. Comments must be received on or before July 18, 1994.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM-7), Docket No. NM-96, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM-96." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-96." The postcard will be date stamped and returned to the commenter.

Background

On April 15, 1994, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the AMD/BA Falcon 50 series airplanes. The AMD/BA Falcon 50 is a business jet with three aft-mounted turbojet engines. The airplane can carry two pilots and 8 to 19 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 45,000 feet. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Duncan Aviation, Inc., must show that the altered AMD/BA Falcon 50 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A46EU include the following for the AMD/BA Falcon 50 series: § 21.29 of part 21, and 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25-1 through 25-34. In addition the following regulations apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25-38; and §§ 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25-41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Falcon 50 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified AMD/BA Falcon 50 series airplanes that would require that the EFIS be designed and installed to

preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

When the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

As discussed above, these special conditions are applicable to the AMD/BA Falcon 50 series airplanes, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46EU to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on the AMD/BA Falcon 50 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified AMD/BA Falcon 50 series airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. Issued in Renton, Washington, on May 24, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–13521 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–NM–08–AD; Amendment 39–8930; AD 94–12–03]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires modification of the belly fairing structure. This amendment revises the compliance time for accomplishment of the modification. This amendment is prompted by the fact that the compliance time of the existing rule would have allowed operators of low-cycle airplanes to accomplish the modification at a time considerably later than that intended. The requirements of this amendment are intended to ensure that the structural integrity of the belly fairing structure is maintained.

DATES: Effective July 5, 1994.

The incorporation by reference of certain publications as listed in the regulations was approved previously by the Director of the Federal Register as of January 10, 1994 (58 FR 64875, December 10, 1993).

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

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–24–11, Amendment 39–8760 (58 FR 64875, December 10, 1993), which is applicable to certain Airbus Model A320 series airplanes, was published in the **Federal Register** on February 2, 1994 (59 FR 4869). The action proposed to supersede AD 93–24–11 to continue to require modification of the belly fairing structure, but to revise the compliance time for accomplishing the modification. That action was prompted by the fact that the compliance time currently specified in paragraph (a) of AD 93–24–11 could allow certain operators to accomplish the modification at a time considerably later than that intended. The proposal proposed to revise the compliance time to "prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after the effective date of the final rule, whichever occurs later." This compliance time will ensure that the structural integrity of the belly fairing structure is maintained in a timely manner.

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

All commenters support the proposed rule.

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

The FAA estimates that 20 airplanes of U.S. registry were affected by AD 93–24–11, and will continue to be affected by this supersedure of that AD. It will take approximately 288 work hours per airplane to accomplish the actions currently required by AD 93–24–11, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,045 per airplane. Based on these figures, the current cost impact of AD 93–24–11 on U.S. operators is estimated to be $337,700, or $16, 885 per airplane.

The total cost impact figure discussed above is presented as if no operator has yet accomplished any of the requirements of AD 93–24–11 (or this supersedure of that AD). There are no foreseeable additional costs that will be imposed by this supersedure of AD 93–24–11.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8760 (58 FR 64875, December 10, 1993), and by adding a new airworthiness directive (AD), amendment 39–8930, to read as follows:

94–12–03 Airbus Industrie: Amendment 39–8930. Docket 94–NM–08–AD. Supersedes AD 93–24–11, Amendment 39–8760.

Applicability: Model A320 series airplanes, MSN 003 through 092 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the belly fairing structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after January 10, 1994 (the effective date of AD 93–24–11, Amendment 39–8760), whichever occurs later: Modify the belly fairing structure in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

(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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Airbus Industrie Service Bulletin A320–53–1014, Revision 1, dated May 26, 1993. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 10, 1994 (59 FR 64875, December 10, 1993). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 5, 1994.

Issued in Renton, Washington, on May 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13372 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

[RIN 3220–AB05]

Availability of Information to the Public

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations establishing fees to be assessed in connection with the search for records and provision of documents by the Board. The regulations provide that the fees will be based on the salaries of the employees who ordinarily perform the searches.

EFFECTIVE DATE: June 3, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552(a) requires the promulgation of a regulation specifying the schedule of fees applicable to the processing of requests for information. These fees are to provide for the recovery of the direct costs of search, duplication, and review. The fees previously provided for in § 200.4(g)(1) no longer reflect the actual costs of processing requests for information and do not include fees for specific methods of transmittal of documents. The Board is amending its regulation to update the fees by establishing criteria for determining fees so that the fees will automatically change with changes in Federal salaries. In addition, the Board is increasing the fees found in section 200.4(g) and is adding a new paragraph to provide a charge for transmittal of documents by other than regular post.

On January 14, 1994, the Board published this rule as a proposed rule (59 FR 2317), inviting comments on or before February 14, 1994. No comments were received. The final rule differs from the proposed rule in that we have deleted specific salary amounts to be assessed for search and review and substituted therefor language that will allow these fees to rise with salary rate increases. Also the maximum computer search charge has been reduced from that in the proposed rule in accordance with more current information.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552; § 200.6 also issued under 5 U.S.C. 552b; § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(1) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(g) * * *

(1) *Fee schedule.* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be the salary rate, including benefits, for a GS–7, step 5 Federal employee;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be the salary rate, including benefits, for a GS–13, step 5 Federal employee;

(iii) The charge for making photocopies of any size document shall be $.10 per copy per page:

(iv) The charge for computer-generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listing or labels. The maximum computer search charge shall be $2,250.00 per hour ($37.50 per minute). Search time shall not include the time expended in analysis or programming where these operations are required.

(v) There shall be no charge for transmitting documents by regular post. The charge for all other methods of transmitting documents shall be the actual cost of transmittal.

* * * * *

Dated: May 27, 1994.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–13522 Filed 6–2–94; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 90C–0453]

Listing of Color Additives Exempt From Certification; Synthetic Iron Oxide; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 7, 1994, of the final rule that appeared in the **Federal Register** of March 7, 1994 (59 FR 10578), that amended the color additive regulations to provide for the safe use of synthetic iron oxide in human food, specifically sausage casings.

DATES: Effective date confirmed: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1994 (59 FR 10578), FDA amended 21 CFR 73.200 of the color additive regulations to provide for the safe use of synthetic iron oxide as a color additive in human food, specifically sausage casings.

FDA gave interested persons until April 6, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 7, 1994, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Director, Center for Food Safety and Applied Nutrition, notice is given that no objections or requests for a hearing were filed in response to the March 7, 1994, final rule. Accordingly, the amendments promulgated thereby became effective April 7, 1994.

Dated: May 25, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–13587 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 346

[Docket No. 80N–0050]

RIN 0905–AA06

Anorectal Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule with opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) anorectal drug products. This amendment updates the monograph to incorporate a United States Pharmacopeia (U.S.P.) name change for an active ingredient included in the monograph. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This final rule is effective January 1, 1995; written comments by August 17, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1990 (55 FR 31776), FDA issued a final monograph for OTC anorectal drug products (21 CFR part 346). That monograph included "Hamamelis water, 'The National Formulary XI'" as an active ingredient in § 346.18(b). "Hamamelis water" was also cited in §§ 346.50 (b)(2)(vi) and (d)(8). Because Hamamelis water had last been included in an official compendium in The National Formulary XI (Ref. 1), it was named in this manner in § 346.18(b).

In 1993 (Refs. 2 and 3), Hamamelis water was proposed for inclusion in U.S.P. XXIII, which becomes official on January 1, 1995. The proposed official name was subsequently changed from "Hamamelis water" to "Witch Hazel" (Ref. 3). To be consistent with the change in compendial status and to give manufacturers advance notice of the need for revised labeling, the agency is changing the name of the ingredient "Hamamelis water" to "witch hazel" in the final monograph for OTC anorectal drug products. These changes will occur in § 346.18(b) in the ingredient listing and in § 346.50 in the introductory text of paragraphs (b)(2)(vi) and (d)(8). These changes will become effective on January 1, 1995.

The amendment will require revised product labeling to substitute witch hazel for hamamelis water. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Because sections 502 (e)(1) and (e)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (e)(1) and (e)(3)) require the established name of a drug to be used, any "witch hazel" drug product initially introduced or initially delivered for introduction into interstate commerce after January 1, 1995, will need to bear the new established name "witch hazel."

As noted previously, these changes make the final monograph for OTC anorectal drug products consistent with a change being implemented in the official compendium (U.S.P.). Because the name change follows from a U.S.P. change, the Commissioner has determined that notice and comment are unnecessary (5 U.S.C. 553(b); 21 CFR 10.40(e)(1)). Therefore, publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). This final rule shall become effective on January 1, 1995.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In this final rule, the labeling change could be implemented by manufacturers at very little cost at the next printing of labels. There are only a few manufacturers of products containing this ingredient. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any economic impact that this rulemaking would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this final rule on OTC drug products should be accompanied by appropriate documentation. The agency will consider any comments to determine whether the regulation should subsequently be modified.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 17, 1994. Three copies of all 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(c)(6) 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.

References

(1) "The National Formulary," 11th ed., Mack Publishing Co., Easton, PA, p. 158, 1960.

(2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 5266–5268, May and June 1993.

(3) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 6399–6401, November and December 1993.

List of Subjects in 21 CFR Part 346

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 346 is amended as follows:

PART 346—ANORECTAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 346 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 346.18 *Astringent active ingredients* is amended by revising paragraph (b) to read as follows:

§ 346.18 Astringent active ingredients.

* * * * *

(b) Witch hazel, 10 to 50 percent.

* * * * *

§ 346.50 [Amended]

3. Section 346.50 *Labeling of anorectal drug products* is amended in the heading of paragraph (b)(2)(vi) by removing the words "hamamelis water" and adding in their place the words "witch hazel"; and in the heading of paragraph (d)(8) by removing the words "hamamelis water" and adding in their place the words "witch hazel".

Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13592 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F–M

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21 CFR Part 347

RIN 0905–AA06

[Docket No. 78N–021A]

Skin Protectant Drug Products for Over-The-Counter Human Use; Astringent Drug Products; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule with opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) astringent drug products. This amendment updates the monograph to incorporate a United States Pharmacopeia (U.S.P.) name change for an active ingredient included in the monograph. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This final rule is effective January 1, 1995; written comments by August 17, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54458), FDA issued a final monograph for OTC astringent skin protectant drug products (21 CFR part 347, subpart A). That monograph included "Hamamelis water, U.S.P." as an active ingredient in § 347.10(c). "Hamamelis water" was also cited in §§ 347.50(b)(3) and (d)(3). The designation "U.S.P." was included in § 347.10(c) because the agency anticipated that a final compendial (U.S.P.) monograph would be established for the ingredient prior to the effective date of the final monograph for OTC astringent skin protectant drug products (58 FR 54458 at 54460). Hamamelis water had last been included in an official compendium in The National Formulary XI (Ref. 1).

In 1993 (Refs. 2 and 3), Hamamelis water was proposed for inclusion in U.S.P. XXIII, which becomes official on January 1, 1995. The proposed official name was subsequently changed from "Hamamelis water" to "Witch Hazel" (Ref. 3). To be consistent with the change in compendial status and to give manufacturers advance notice of the need for revised labeling, the agency is changing the name of the ingredient "Hamamelis water" to "witch hazel" in the final monograph for OTC astringent skin protectant drug products. These changes will occur in § 347.10(c) in the ingredient listing and in § 347.50 in the introductory text of paragraphs (b)(3), (c)(2), and (d)(3). These changes will become effective on January 1, 1995.

The amendment will require revised product labeling to substitute witch hazel for hamamelis water. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Because sections 502(e)(1) and (e)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1) and (e)(3)) require the established name of a drug to be used, any witch hazel drug product initially introduced or initially delivered for introduction into interstate commerce after January 1, 1995, will need to bear the new established name "witch hazel."

As noted previously, these changes make the final monograph for OTC astringent skin protectant drug products consistent with a change being implemented in the official compendium (U.S.P.). Because the name change follows from a U.S.P. change, the Commissioner has determined that notice and comment are unnecessary (5 U.S.C. 553(b); 21 CFR 10.40(e)(1)). Therefore, publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). This final rule shall become effective on January 1, 1995.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In this final rule, the labeling change could be implemented by manufacturers at very little cost at the next printing of labels. There are only a few manufacturers of products containing this ingredient. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any economic impact that this final rule would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this final rule on OTC drug products should be accompanied by appropriate documentation. The agency will consider any comments to determine whether the regulation should subsequently be modified.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this final

rule. Written comments on the agency's economic impact determination may be submitted on or before August 17, 1994. Three copies of all 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 and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(c)(6) 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.

References

(1) "The National Formulary," 11th ed., Mack Publishing Co., Easton, PA, p. 158, 1960.

(2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 5266-5268, May and June 1993.

(3) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 6399-6401, November and December 1993.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 347.10 *Astringent active ingredients* is amended by revising paragraph (c) to read as follows:

§ 347.10 Astringent active ingredients.

* * * * *

(c) Witch hazel.

* * * * *

§ 347.50 [Amended]

3. Section 347.50 *Labeling of astringent drug products* is amended in the heading of paragraph (b)(3) by removing the words "Hamamelis water" and adding in their place the words "witch hazel"; in the heading of paragraph (c)(2) by removing the words "hamamelis water" and adding in their place the words "witch hazel"; and in the heading of paragraph (d)(3) by removing the words "hamamelis water" and adding in their place the words "witch hazel".

Dated: May 16,1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13589 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 510, 520, and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for five new animal drug applications (NADA's) from Purina Mills, Inc., to PM Resources, Inc.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044:

NADA number	Ingredient	Trade name
007–076	Sulfaquinoxaline Sodium	Sulfa-Nox Liquid.
008–244	Sulfaquinoxaline Sodium	Sulfa-Nox Concentrate.
010–886	Piperazine Phosphate Monohydrate	Purina Liquid Wormer.
043–215	Famphur	Purina Grub-Kill.
092–150	Pyrantel Tartrate	Purina Horse & Colt Wormer.

Accordingly, the agency is amending the regulations in 21 CFR Parts 510.600(c)(1) and (c)(2), 520.1806(b), 520.2045(b)(2), 520.2325a(c)(2), and 524.900(c) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

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

21 CFR Parts 520 and 524

Animal drugs.

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 510, 520, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "PM Resources, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "060594" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
PM Resources, Inc.,13001 St. Charles Rock Rd., Bridgeton, MO 63044.	060594
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
060594	PM Resources, Inc.,13001 St. Charles Rock Rd., Bridgeton, MO 63044

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: Sec. 512 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§520.1806 [Amended]

4. Section 520.1806 *Piperazine monohydrochloride liquid* is amended in paragraph (b) by adding "and 060594" after "017135".

§520.2045 [Amended]

5. Section 520.2045 *Pyrantel tartrate powder; pyrantel tartrate pellets* is amended in paragraph (b)(2) by removing "017800" and adding in its place "060594".

§520.2325a [Amended]

6. Section 520.2325a *Sulfaquinoxaline drinking water* is amended in paragraph (c)(2) by removing "017800" and adding in its place "060594".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

7. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§524.900 [Amended]

8. Section 524.900 *Famphur* is amended in paragraph (c) by removing "017800" and adding in its place "060594".

Dated: May 26, 1994.

Robert C. Livingston,

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

[FR Doc. 94–13588 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 220 and 222

General Provisions and Miscellaneous Provisions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This rule removes parts 220 and 222 ("Obey regulations") from title 22 of the CFR. The Obey regulations continue in effect and are filed, together with USAID's other personnel provisions, in the agency's internal directive system, as Attachment 1B of USAID Handbook 26.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jan Miller at 202–647–6380.

PARTS 220 AND 222—[REMOVED]

For the reasons set forth above, parts 220 and 222 are removed from title 22 of the Code of Federal Regulations.

Authority: 22 U.S.C. 2381.

Dated: May 24, 1994.

Frank Almaguer,

Deputy Assistant Administrator.

[FR Doc. 94–13548 Filed 6–2–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval, with two exceptions, of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to definitions, administrative hearing procedure, civil penalties, use of explosives, standards for revegetation success, postmining land use, and inspection and enforcement.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas's program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

By letter dated September 14, 1993 (Administrative Record No. KS–567), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment with the intent of satisfying, in part, required program amendments at 30 CFR 916.16 (a), (b) and (c) that were placed on the Kansas program on October 7, 1988 (53 FR 39467, 39470), September 13, 1991 (56 FR 46548), and June 14, 1993 (58 FR 32847, 32855).

OSM published a notice in the September 27, 1993, **Federal Register** announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (58 FR 50302). The public comment period ended October 27, 1993. The public hearing scheduled for October 22, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns related to the Kansas Administrative Regulations (K.A.R.) 47–4–14a(c)(7), regarding intervention, K.A.R. 47–4–14a (d)(10)(D) and (d)(5)(B)(vi) regarding public hearings, K.A.R. 47–5–5a (a) and (b) regarding civil penalties, K.A.R. 47–5–5a(b)(14) regarding the definition of "violation, failure or refusal," and K.A.R. 47–15–1a(b)(21) regarding inspection and enforcement, substitution of terms.

OSM notified Kansas of these concerns by letter dated January 26, 1994 (Administrative Record No. KS–574). Kansas responded in a letter dated March 9, 1994 (Administrative Record No. KS–575), by submitting further revisions to Articles 4, 5, 6, 9, and 15 of the Kansas Administrative Regulations. On March 10, 1994 (Administrative Record No. KS–581), Kansas requested further information from OSM regarding its proposed amendment. Subsequently, Kansas again, in a letter dated March 10, 1994 (Administrative Record No. KS–576), revised its proposed amendment. OSM reopened the public comment period on March 30, 1994 (59 FR 14811). The public comment period closed on April 14, 1994.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with two exceptions, that the proposed amendment as submitted by Kansas on September 14, 1993, meets the requirements of SMCRA and 30 CFR chapter VII.

1. Provisions Not Discussed

Kansas proposes certain revisions to its rules that involve minor typographical corrections and recodification. The Director finds that these proposed revisions, unless specifically discussed below, are no less effective in meeting SMCRA's requirements than the Federal regulations and is approving them.

2. Required Program Amendments

Kansas submitted proposed revisions in response to required program amendments that the Director placed on the Kansas program, codified in the Federal regulations at 30 CFR 916.16 (a), (b) and (c). The Director finds that the following proposed State regulations satisfy the required program amendments, are no less effective in meeting SMCRA's requirements than the Federal regulations indicated in each required program amendment, and is approving them (the codified required amendments at 30 CFR 916.16 are indicated in brackets): K.A.R. 47–4–14a(c)(7) by requiring that a person petitioning for leave to intervene in a proceeding need only show why his interest is or may be adversely affected rather than why his interest would be adversely affected and by requiring the presiding officer to make a decision to grant intervention based on factors listed at K.A.R. 47–4–14a(c)(7)(B)(i)–(iv) in the event subsection (7)(A)(i) or (7)(A)(ii) are not applicable [30 CFR 916.16(b)(8)]; K.A.R. 47–4–14a(c)(11) by providing that any person that fails to file a responsive pleading by the required time *may* be deemed to have waived his right to a hearing [30 CFR 916.16(b)(10)]; K.A.R. 47–4–14a (b), (d), and (d)(2)(F) by replacing the phrase "this act" with the phrase "these rules and regulations," [30 CFR 916.16(c)(2)]; K.A.R. 47–5–5a (a) and (b), (a)(8), (a)(10) and (b)(14)–(20) by replacing the identified Federal terms and citations with the appropriate State terms and citations and by providing the State address where an individual may file a petition for review [30 CFR 916.16(b)(24)]; K.A.R. 47–5–5a(b)(14) by replacing Federal terms and citations with the appropriate State terms and citations [30 CFR 916.16(b)(24)]; K.A.R. 47–5–5a(c)(7)(C) by imposing a 30-day time limit within which the Surface Mining Section must remit a refund [30 CFR 916.16(c)(3)]; K.A.R. 47–6–7(h)(2) by correcting an improper reference from K.A.R. 47–4–14a(d)(14) to K.A.R. 47–4–14a(d)(14) [30 CFR 916.16(b)(30)]; K.A.R. 47–9–1 (c)(17) and (d)(17) by modifying the adoption by reference of the Federal regulations at 30 CFR 816.61 by deleting from its adoption by reference of 30 CFR 816–817.61(c)(1) everything but the statement "all blasting operations shall be conducted under the direction of a certified blaster," [30 CFR 916.16(c)(4)]; K.A.R. 47–9–1 (c)(46) and (d)(44) by deleting paragraph (d), concerning variances for steep slope mining, from its adoption by reference of 30 CFR 816–817.133 [30 CFR 916.16(a)]; K.A.R. 47–15–1a by removing the incorrect reference to K.A.R. 47–15–5a from the section heading for K.A.R. 47–15–1a [30 CFR 916.16(c)(5)]; K.A.R. 47–15–1a(b) (6) and (9) by providing the correct counterpart State citations for the terms "43 CFR Part 4" and "43 CFR 4.1281," [30 CFR 916.16(c)(7)]; and K.A.R. 47–47–15–1a(b)(21) by requiring that informal public hearings be conducted in accordance with K.A.R. 47–4–14a [30 CFR 916.16(c)(6)].

Accordingly, the Director is removing the required program amendments as identified above from the Kansas program and as codified at 30 CFR 916.16.

3. K.A.R. 47–2–75(e)(6), Definitions

Kansas proposes to revise K.A.R. 47–2–75(e)(6) to replace the reference in the Federal regulations at 30 CFR 846.5 to section 703 of SMCRA which deals with employee protection, with a reference to Kansas Statute Annotated (K.S.A.) 75–2973 which also deals with employee protection. Kansas is submitting this revision in response to a required program amendment placed on the Kansas program at 30 CFR 916.16(c)(1).

The Director finds that Kansas' proposed amendment does not render the State provision at K.A.R. 47–2–75(e)(6) less effective in meeting SMCRA's requirements than the Federal provision at 30 CFR 846.5 and is approving it. Accordingly, the Director is removing the required program amendment at 30 CFR 916.16(c)(1).

4. K.A.R. 47–4–14a(d)(6)(E) (iii) and (iv), Notice of Administrative Hearings

Kansas proposes to revise K.A.R. 47–4–14a(d)(6)(E)(iii) and add K.A.R. 47–4–14a(d)(6)(E)(iv) so that the rules would read as follows:

(E) The state agency shall cause notice to be given to any other person entitled to notice under any other provisions of law, who has not been given notice under section (d)(6)(A), as follows:

(iii) Notice under this subsection may include all types of information provided in sections (d)(6) (A) through (D) or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings which are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) The surface mining section shall also post notice of the hearing at their office and, where practicable, publish it in a newspaper of general circulation in the area of the mine at least seven (7) days prior to the hearing.

Kansas proposes these revisions in response to a required program amendment placed on the Kansas program at 30 CFR 916.16(b)(17) that instructed Kansas to remove the provisions that allowed for the holding of hearings by telephone or other electronic means. The required program amendment resulted from a finding published in a **Federal Register** notice dated September 13, 1991 (56 FR 46531, 46538). The finding concluded that the proposal to conduct hearings by telephone or other electronic means conflicted with existing SMCRA and State requirements for public hearings. *Id.* See also 58 FR 32850–32851 (June 14, 1993).

The proposed revision at K.A.R. 47–4–14a(d)(6)(E)(iii) insures, among other things, that the notice of an administrative hearing provided to non-parties will notify members of the general public where they may go to participate in an electronically conducted hearing. Moreover, the proposed language at K.A.R. 47–4–14a(d)(6)(E)(iv) requires the Surface Mining Section to post such notices at its office, so that members of the general public have access to one central location where they can always obtain information about upcoming hearings.

The proposed language at K.A.R. 47–4–14a(d)(6)(E)(iv) also provides that, "where practicable," the Surface Mining Section will publish the notice in a newspaper or general circulation in the area of the mine at least seven (7) days prior to the hearing. As a general rule this proposed 7-day publication notice is not inconsistent with SMCRA or the Federal rules because SMCRA does not uniformly require regulatory authorities to publish advance notice of all hearings. However, there are instances where SMCRA and other provisions of the Kansas program specifically require the regulatory authority to publish advance notice of a hearing. Moreover, in those specific instances, the regulatory authority is required to publish such notice more than seven days in advance of the hearing date. See

section 513(b) of SMCRA; 30 CFR 773.13(c)(2)(ii). See also K.A.R. 47–3–42(a)(43) (incorporating by reference 30 CFR 773.13).

The Director is approving the proposed rule at K.A.R. 47–4–14a(d)(6)(E)(iv) with the understanding that it is a general rule and that in any particular instance where a more specific rule of the Kansas program requires publication of advance notice of an administrative hearing, the more specific rule must take precedence over this proposed general rule.

The Director finds that the proposed rules at K.A.R. 47–4–14a(d)(6)(E) (iii) and (vi) are not inconsistent with SMCRA and the Federal program and is approving them. Accordingly, the Director is removing the required program amendment from the Kansas program and as codified at 30 CFR 916.16(b)(17).

5. K.A.R. 47–6–2(d) and (d)(3), Permit Revisions

Kansas proposes to modify K.A.R. 47–6–2(d) and (d)(3) by adding the word "significant" so that the rules would read:

(d) No application for a *signficant* revision shall be approved unless the applicant demonstrates and the regulatory authority finds that:

(1) the reclamation required by the state act and the regulatory program can be accomplished;

(2) applicable requirements under K.A.R. 47–3–42(a)(43) pertinent to the revision are met; and

(3) the application for *a significant* revision complies with all requirements of the state act and the regulatory program.

Prior to the proposed amendments, the State provisions at K.A.R. 47–6–2(d) and (d)(3) were substantively similar to the counterpart Federal regulation at 30 CFR 774.13(c).

The proposed revisions at K.A.R. 47–6–2–(d) and (d)(3) render the State provisions less effective in meeting SMCRA's requirements than the Federal regulation at 30 CFR 774.13(c) because, as revised, the State provisions would apply the approval criteria of K.A.R. 47–6–2(d) only to significant permit revisions. In contrast, the Federal regulations require that such approval criteria apply to *all* permit revisions. Therefore, the Director finds Kansas' proposed revisions at K.A.R. 47–6–2(d) and (d)(3) to be less effective in meeting SMCRA's requirements than the Federal regulation at 30 CFR 774.13(c) and is not approving it.

6. K.A.R. 47–9–1(c)(43) Revegetation: Standards for Success, Surface Mining Activities, and K.A.R. 47–9–1(d)(39) Revegetation: Standards for Success, Underground Mining Activities

Kansas proposes to add a subsection (3) to 30 CFR 816/817.116(A) that would read:

(3) Data being used for bond release will be submitted to the surface mining section annually. This includes data for the last augmented seeding which will start the extended liability period. The following timetable for submissions shall be followed: (i) The planting reports including soil tests shall be submitted by March 31 of the year following the year in which they were performed. (ii) The production and ground cover data shall be submitted within 30 days of the date they were sampled. Ground cover must include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results will then be submitted by March 31 of the following year. (iii) All data must be clearly identified as to the bond release management area that it represents.

While the Federal regulations do not provide similar detailed requirements regarding submission of data used for bond release, as the above-quoted proposed Kansas provision, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program.

Therefore, the Director is approving Kansas' proposed revisions at K.A.R. 47–9–1(c)(43) and 47–9–1(d)(39).

7. K.A.R. 47–9–1(f)(2). Special Permanent Program Performance Standards—Operations on Prime Farmlands

Kansas proposes to adopt by reference the Federal regulations at 30 CFR 823.11, including 30 CFR 823.11(a) that addresses exemptions to prime farmland performance standards and which was previously deleted from the Kansas program. Kansas expressed its desire to readopt 30 CFR 823.11(a) in its letter dated March 10, 1994.

The Federal provision at 30 CFR 823.11(a) applies to surface and underground mines alike and exempts from compliance with the special prime farmland performance standards "[c]oal preparation plants, support facilities, and roads * * * that are actively used over extended periods of time * * * where such uses affect a minimal amount of land." On October 1, 1984, the United States District Court for the District of Columbia remanded 30 CFR 823.11(a) in *In re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 15 ELR 20481 (D.D.C. 1984), for two reasons. First, the Court found that OSM had failed to adequately consider and discuss the basic differences between underground and surface mining operations when it applied the exemption at 30 CFR 823.11(a) to surface, as well as underground, mines. *Id.*, 21 ERC at 1734–1735. Second, the Court found that OSM had not provided enough guidance regarding the scope of the exemption:

The Secretary has provided no indication of what he considers an extended period of time or a minimum amount of land.

Id., 21 ERC at 1735.

On February 21, 1985, in response to the Court's October 1, 1984, decision, OSM suspended 30 CFR 823.11(a) insofar as the exemption therein relates to facilities used in surface, as opposed to underground, mining (50 FR 7274, 7277). With regard to facilities used in underground mining, OSM stated that the exemption at 30 CFR 823.11(a) remained applicable, but that OSM intended to propose rules to clarify the scope of the exemption. OSM did propose such rules on March 25, 1987 (52 FR 9644). However, after considering comments regarding the proposed rules, OSM determined that it lacked sufficient data to support the promulgation of a specific spatial limitation on the exemption (53 FR 40828, 40835 (October 18, 1988)). Therefore, OSM postponed rulemaking pending further study. *Id.* OSM stated that existing 30 CFR 823.11(a), as modified by the February 21, 1985, suspension notice, was to be retained in the interim. *Id.* Between the time OSM published proposed rules and later determined that final rulemaking had to be postponed to allow further study, the Court of Appeals for the District of Columbia, on January 29, 1988, affirmed the ruling of the District Court concerning the remand of 30 CFR 823.11(a). *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, 722–723 (D.C. Cir. 1988).

At the present time then, 30 CFR 823.11(a) is suspended insofar as it relates to surface, as opposed to underground, mining. Therefore,

Kansas' proposal to adopt 30 CFR 823.11(a), as applied to surface mining, is inconsistent with SMCRA, as interpreted by court decisions. Moreover, with regard to underground mining, the Kansas proposal is inconsistent with SMCRA, as interpreted by court decisions, because it fails to adequately explain what is an extended period of time or a minimal amount of land. Accordingly, the Director cannot approve the proposed adoption of 30 CFR 823.11(a) at K.A.R. 47–9–1(f)(2).

IV. Public and Agency Comments

Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to "Submission of Amendment." No public comments were received

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from the Administrator of the Environmental Protection Agency (EPA), and various other Federal agencies with an actual or potential interest in the Kansas program.

By letter dated April 8, 1994 (Administrative Record No. KS–579), the Soil Conservation Service responded that it had no comment.

By letter dated April 12, 1994 (Administrative Record No. KS–580), the Fish and Wildlife Service responded that it had no comment.

Comments were also solicited from various State agencies but none elected to comment.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated November 2, 1993 (Administrative Record No. KS–571), the EPA regional office in Kansas City, Kansas responded that it did not have any comments regarding the proposed revisions.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. No comments were received from either SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Kansas on September 14, 1993, as modified on March 9, and March 10, 1994, with two exceptions.

The Director is not approving proposed rules K.A.R. 47–6–2(d) and (d)(3), Permit revisions, as discussed in finding No. 5 and K.A.R. 47–9–1(f)(2), Special permanent program performance standards—operations on prime farmlands—applicability, as discussed in finding No. 7.

Except as noted above, the Director is approving the Kansas regulations with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kansas program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Kansas of only such provisions.

VII. Procedural Determinations

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With Executive Order 12866

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

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Compliance With the Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

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

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

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

2. Section 916.15 is amended by adding paragraph (o) as follows:

§916.15 Approval of regulatory program amendments.

* * * * *

(o) With the exceptions of K.A.R. 47–6–2 (d) and (d)(3), Permit revisions and K.A.R. 47–9–1(f)(2), Special permanent program performance standards—operations on prime farmlands—applicability, the following revisions to the Kansas Administrative Regulations (K.A.R.) submitted to OSM on September 14, 1993, are approved effective June 3, 1994: K.A.R. 47–2–75(e)(6), State employee protection; K.A.R. 47–4–14a(c)(7), Intervention; K.A.R. 47–4–14a(c)(11), Waiver of hearing; K.A.R. 47–4–14a (b), (d), and (d)(2)(F), Definitions, formal hearings; K.A.R. 47–4–14a(d)(6)(E) (iii) and (iv), Public hearings; K.A.R. 47–5–5a(a)(10), Individual civil penalties; K.A.R. 47–5–5a(b), (14), (15), (16), (19), and (20), Civil penalties—substitution of terms; K.A.R. 47–5–5a(c)(7)(C), Initial order of the presiding officer; K.A.R. 47–6–7(h)(2), Appeals; K.A.R. 47–9–1 (c)(17) and (d)(17), Blasting; K.A.R. 47–9–1 (c)(43) and (d)(39), Revegetation: standards for success; K.A.R. 47–9–1 (c)(46) and (d)(44), Steep slope mining; K.A.R. 47–15–1a, Inspection and enforcement, general citation; and K.A.R. 47–15–1a(b) (6), (9), and (21), Inspection and enforcement—substitution of terms.

3. Section 916.16 is amended by removing the text and revising the heading to read as follows:

§916.16 Required regulatory program amendments. [Reserved]

[FR Doc. 94–13503 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular, Public Debt Series No. 1–93]

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form an amendment to 31 CFR part 356, published as a final rule on January 5, 1993 (58 FR 412). 31 CFR part 356, also referred to as the uniform offering circular, sets out terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes and bonds. The amendment contained herein allows for Treasury securities awarded to a submitter that is a member of a clearing corporation to be delivered to an account of the clearing corporation at a depository institution, provided the securities are for the submitter's own account and certain agreements have been executed by the parties and filed with the appropriate Federal Reserve Bank. Specifically, this change will enable a clearing corporation to net securities awarded at an auction to submitters that are its members with the when-issued and secondary market trades of such members in the same securities.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Don Hammond, Acting Director, Government Securities Regulations Staff, Bureau of the Public Debt (202) 219–3632, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320. (TDD for hearing impaired: (202) 219–9274.)

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

Clearing corporations play an increasingly important role in the clearance and settlement of securities transactions. To date, clearing corporation involvement in the clearance and settlement of Treasury securities has been limited to the secondary market. The Department believes that including Treasury auction purchases in a multilateral netting system operated by a clearing agency registered with the Securities and Exchange Commission ("SEC") can be beneficial to the efficiency of the government securities market. For example, with respect to the book-entry system for Treasury securities, it can reduce the number of securities transfers. In addition, it can enable the clearing agency to improve its risk management by providing a more complete picture of its members' positions.

This amendment to the uniform offering circular specifies the conditions under which Federal Reserve Banks may deliver to an account of a clearing corporation at a depository institution securities awarded at auction to submitters that are members of the clearing corporation. The amendment permits only securities awarded to a submitter for its own account to be delivered through a clearing corporation. To qualify as a clearing corporation for purposes of this rule, an entity must be registered with the SEC as a clearing agency.

Currently, the only SEC-registered clearing agency that nets trades in Treasury securities is the Government Securities Clearing Corporation ("GSCC"). GSCC has proposed to net GSCC netting member auction awards of Treasury securities against their when-issued and secondary market trades in the same securities. On March 10, 1994, the SEC published the GSCC's proposed rule amendments necessary to implement the netting of the proprietary auction awards of its members (59 FR 11345). The SEC comment period ended on March 31, 1994.

This rule amends §§ 356.2, 356.11, 356.16, and 356.24 of the uniform offering circular.

Specifically, in § 356.2, the definition of the term "autocharge agreement" has been expanded to allow for an autocharge between a clearing corporation and a depository institution. In addition, the term "clearing corporation" is defined as a clearing agency, as defined by § 3 of the Securities Exchange Act of 1934, that is registered with the SEC.

The term "delivery and payment agreement" has also been added to the definitions in § 356.2. This term refers to an agreement between a submitter and a clearing corporation authorizing a Federal Reserve Bank to deliver securities awarded to a submitter to, and accept payment from, a depository institution for the clearing corporation. This new agreement is needed to authorize the delivery of securities to a clearing corporation's account rather than to the submitter's account. Any existing autocharge agreements between a submitter and a depository institution will continue to govern delivery and

payment for submitters not taking delivery through a clearing corporation. In addition, any existing autocharge agreements will continue to govern the delivery of and payment for securities awarded to customers.

New paragraph 356.11(b)(2) makes clear that for competitive bids submitted in paper form, a submitter that is a clearing corporation member and is submitting bids for its own account and for customers must submit a separate tender for each specific delivery instruction. This requirement also applies to any other submitter instructing delivery of awarded securities to more than one account.

New paragraph 356.16(b)(2)(iii) has been added to clarify that, if awarded securities are to be delivered to an account of a clearing corporation at a depository institution, a delivery and payment agreement must be acknowledged by, and on file with, the appropriate Federal Reserve Bank prior to the submission of a tender for the securities. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the submitter's auction awards. Further, a clearing corporation entering into delivery and payment agreements with submitters must have an acknowledged autocharge agreement on file at the Federal Reserve Bank maintaining the accounts of the clearing corporation's agent banks. By entering into an autocharge agreement, the clearing corporation authorizes the Federal Reserve Bank to provide the depository institution whose funds account will be charged on issuance notice of certain payment related information for securities to be delivered.

Finally, paragraph 356.24(a) has been expanded to provide that, if securities are to be delivered to an account of a clearing corporation at a depository institution, notice of awards will be provided to the clearing corporation. Also, paragraph 356.24(c) has been modified to correspond to the expanded definition of autocharge agreement.

II. Special Analysis

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

In addition, because this rule is in the public interest, expedites the handling and processing of government securities, offers a new option for delivery and payment of securities, and does not adversely affect holders of government securities, the Department has determined not to publish the rule for public comment and to make the rule effective immediately upon publication.

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

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, subchapter B, part 356, is hereby amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*

2. The heading for part 356 is revised as set forth above.

3. Section 356.2 is amended by revising the definition of "Autocharge agreement" and adding in alphabetical order the definitions of "Clearing corporation" and "Delivery and payment agreement" to read as follows:

§ 356.2 Definitions.

* * * * *

Autocharge agreement means a written agreement between a submitter and a depository institution or between a clearing corporation and a depository institution, acknowledged by a Federal Reserve Bank, which authorizes a Federal Reserve Bank to deliver securities awarded at auction to the book-entry account of the depository institution or, when authorized, to a TREASURY DIRECT account, and to charge a funds account of the depository institution for the settlement amount of the securities. (See exhibit B for a sample autocharge agreement between a submitter and a depository institution.)

* * * * *

Clearing corporation means a clearing agency as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and the rules thereunder.

* * * * *

Delivery and payment agreement means a written agreement between a clearing corporation and a submitter, acknowledged by a Federal Reserve Bank, authorizing the Federal Reserve Bank, with respect to securities awarded to the submitter for its own account, to deliver such securities to, and accept payment from, a depository institution acting on behalf of the clearing corporation pursuant to an acknowledged autocharge agreement.

* * * * *

4. Section 356.11 is amended by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

§ 356.11 Submission of bids.

* * * * *

(b) * * *

(2) For competitive bids, if securities are to be delivered to more than one account, a separate paper tender must be submitted for each delivery instruction specified.

* * * * *

5. Section 356.16 is amended by revising paragraph (b)(2)(ii) and adding a new paragraph (b)(2)(iii) to read as follows:

§ 356.16 Responsibility for payment.

* * * * *

(b) * * *

(2) * * *

(ii) A submitter that chooses not to pay by charge to its funds account or a submitter that does not have a funds account must, prior to the submission of a tender, have an acknowledged autocharge agreement on file at the Federal Reserve Bank to which the tender is submitted. By submitting a tender for securities to be paid for under such autocharge agreement, the submitter authorizes the Federal Reserve Bank to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's tender.

(iii) In addition, a submitter that is a member of a clearing corporation may instruct that delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account, provided that the following requirements are met:

(A) The submitter must, prior to the submission of a tender for such securities, have a delivery and payment agreement with the clearing corporation

acknowledged by, and on file at, the Federal Reserve Bank to which the tender is submitted. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the par amounts of, prices to be charged for, and total payment amounts for, securities awarded to the submitter for its own account.

(B) An autocharge agreement between the clearing corporation and the depository institution must, prior to the submission of a tender for such securities, be acknowledged by, and on file at, the Federal Reserve Bank servicing the depository institution. By entering into such an agreement, the clearing corporation authorizes the Federal Reserve Bank to which the tender is submitted to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total aggregate par amount of, prices to be charged for, and total payment amounts for, securities to be delivered to the clearing corporation's designated account at the depository institution.

* * * * *

6. Section 356.24 is amended by revising paragraphs (a) and (c) to read as follows:

§ 356.24 Notice of awards; confirmations.

(a) *Notice of awards*—(1) *Notice to submitters.* Notice of awards will be provided by a Federal Reserve Bank or the Department to submitters of successful competitive bids. Submitters of noncompetitive bids will be notified only when the price to be paid by noncompetitive bidders is over par or if noncompetitive bids are not accepted in full.

(2) *Notice to clearing corporation.* If awarded securities are to be delivered pursuant to a delivery and payment agreement, notice of the awards also will be provided by a Federal Reserve Bank or the Department to the clearing corporation that is a party to such agreement.

* * * * *

(c) *Confirmation of award and settlement amount to a depository institution having an autocharge agreement with a submitter or a clearing corporation.* Not later than the day after each auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with either a submitter or a clearing corporation as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date.

* * * * *

7. The title to Exhibit B to Part 356 is revised to read as follows:

Exhibit B to Part 356. Sample Autocharge Agreement To Deliver and Charge for Securities Awarded in Department of the Treasury Auctions (Submitter and Depository Institution).

* * * * *

Dated: May 11, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94–13621 Filed 6–1–94; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–94–006]

Special Local Regulation; Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Thomas Graves Memorial Fireworks Display. This event will be held on Lake Ontario, Port Bay, NY on July 3, 1994 with a rain date of July 9, 1994. This regulation will restrict general navigation on Lake Ontario, Port Bay, NY. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 9:30 p.m. (EDST) until 11 p.m. (EDST) on July 3, 1994 with a rain date of July 9, 1994.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 2, 1994, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafter of this regulation is Scott J. Smith, Lieutenant Junior Grade, U.S. Coast Guard, Project Officer, Aids to Navigation & Waterways Management Branch and Karen E. Lloyd, Lieutenant, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The Thomas Graves Memorial Fireworks Display will be conducted on Lake Ontario, Port Bay, NY on July 3, 1994. This regulation will restrict general navigation on Lake Ontario, Port Bay Harbor, in a 500 foot zone surrounding a barge anchored at 47°17′46″ North Latitude and 076°50′02″ West Longitude. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station Sodus Point, NY).

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review 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 these regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and Recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A temporary section 100.35–T0906 is added to read as follows:

§ 100.35–T0906 Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY.

(a) *Regulated area.* That portion of the Lake Ontario, Port Bay Harbor, Port Bay, NY a 500 ft zone surrounding a barge anchored in position 47° 17′ 46″ North Latitude and 076° 50′ 02″ West Longitude.

(b) *Special local regulation.* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol commander.* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section becomes effective from 9:30 p.m. (EDST) until 11 p.m. (EDST) on July 3, 1994 unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY). If the date of the event is changed due to weather, this section will become effective at the same time on July 9, 1994, unless the event is cancelled. Notice of change in date or cancellation will be provided in a Broadcast Notice to Mariners.

Dated: May 18, 1994.

Rudy K. Peschel,

Read Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 94–13539 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD02–93–002

RIN 2115–AE47

Drawbridge Operation Regulations; St. Croix River, MN and WI

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: The Coast Guard is establishing a temporary rule to regulate the operation of the S36 Bridge over the St. Croix River at mile 23.4, at Stillwater. The present opening schedule has contributed to traffic delays and congestion in Stillwater. The existing regulation is being temporarily amended for the purpose of evaluating the reasonableness of proposed changes. The Coast Guard is requesting comments from interested parties throughout the evaluation period.

EFFECTIVE DATES: This temporary rule is effective from June 3, 1994 to October 15, 1994. Comments must be received on or before November 15, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832, Attention: docket CGD02–93–002.

Comments may also be delivered to room 2.107B at the above address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays. For information concerning comments, the telephone number is (314) 539–3724.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832, telephone (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD02–93–002), identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change or not implement a final rule in view of the comments.

The Coast Guard does not plan to hold another public meeting. However, persons may request a public meeting by writing to the Docket Clerk at the address under **ADDRESSES**. If the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Wanda G. Renshaw, Project Manager, and Lieutenant Commander Arn Denny, Project Attorney.

Regulatory History

On Friday, October 8, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, St. Croix River, Minnesota and Wisconsin in the **Federal Register** (58 FR 52466). The Coast Guard received six comments on the proposal. A public meeting was requested and held on April 7, 1994, in the Stillwater Municipal Building.

For the reasons discussed below, the Coast Guard has decided to issue a temporary regulation which will allow it to evaluate the proposed changes for

the remainder of the summer boating season. The Coast Guard has decided that good cause exists for making this temporary regulation effective upon publication in the **Federal Register** because, since vessel traffic falls off dramatically in the fall, early implementation will provide for an evaluation period which will include as much of the summer boating season as is possible.

Background and Purpose

The St. Croix River is heavily used by recreational craft. River excursion boats are the only known commercial navigation passing the bridge. To meet the navigational needs of these boaters, the S36 Bridge is presently required to open on signal, from May 15 through October 15, on a set schedule of hourly and half-hourly openings from 8 a.m. to 10 p.m. From October 16 through May 14 the draw will open on signal if at least 24 hours notice is given.

The Mayor of Stillwater requested that the operating schedule be amended as a means of reducing traffic congestion on the approaches to the bridge. As a result, the Coast Guard proposed a change which would permit hourly openings on weekdays from 8 a.m. to 10 p.m. and on Saturdays, Sundays and federal holidays from 8 a.m. to midnight. The draw would continue to be operated with two hours advance notice from 10 p.m. to 8 a.m. weekdays, and from midnight to 8 a.m., Saturdays, Sundays, and federal holidays.

Discussion of Comments and Changes

The Coast Guard received six comments on the Notice of Proposed Rulemaking. Three supported the proposed change citing increased bank erosion from heavy recreational traffic, air pollution from waiting vehicles, and loss of business in Stillwater due to traffic congestion and delays caused by frequent bridge openings. One, from the Minnesota Historical Society, stated that the proposed action would have no effect on the historic characteristics of the bridge, which is listed on the National Register of Historic Places. Two, a local recreational boater and the owner of a local marina, objected to the proposed change. The boater commented that traffic congestion existed in downtown Stillwater during the winter months when the bridge was not opened for river traffic. He noted that excessively long bridge openings, resulting in increased delay times to highway traffic, during the preceding boating season were caused by unusual and persistent high river levels, requiring longer span openings to accommodate vessels that could have passed under the closed span during normal water conditions. He also noted that traffic delays were exacerbated by vehicles parking on streets approaching the bridge, and that the increased use of the bridge by tractor-trailers often precluded two-way traffic on the narrow bridge. The marina owner objected to the proposal because he would lose the business of larger vessels presently moored at his facility which required bridge openings to travel downriver. He commented that the City of Stillwater had received proposals over the past several years to resolve the traffic congestion, but had not implemented any of the recommendations. He also noted that street parking in downtown Stillwater restricted traffic flow. He questioned the perceived increase in boating traffic versus highway traffic, and requested that a public meeting be held to present the facts and discuss possible solutions. That meeting was convened in Stillwater on April 7, 1994.

As a result of the public meeting and of the objections to the proposed revision, the Coast Guard requested that Minnesota Department of Transportation (MNDOT) conduct traffic studies, evaluate the results, and recommend an opening schedule that would retain an acceptable number of bridge openings and provide for peak highway traffic. Based on its evaluation of traffic counts and studies, MNDOT advised that no change was warranted by traffic conditions during weekday morning hours. Because heavy vehicular traffic arrived between 3 p.m. and 7 p.m. on weekdays, MNDOT recommended that the existing schedule be observed up to and including the 2:30 p.m. opening and that openings after 2:30 p.m. should occur at 4 p.m., 5:30 p.m., 6:30 p.m., and 7 p.m. with an opening every half hour thereafter until 10 p.m. Because heavy vehicular traffic arrived between 9 a.m. and 8 p.m. on weekends and holidays, MNDOT recommended that the existing schedule be retained, up to and including the 9 a.m. opening, and that the opening schedule be revised for one opening per hour from 9 a.m. until 8 p.m. with half-hourly openings from 8 p.m. until midnight.

The Coast Guard has decided to amend the existing regulation with a temporary rule promulgating the opening schedule recommended by MNDOT. This temporary rule will be evaluated throughout the 1994 St. Croix River boating season and comments on the revision will continue to be received through November 15, 1994. The Coast Guard decided to make the amendment under temporary rulemaking rather than under a deviation which is valid only for up to 90 days because extending the evaluation period through the remainder of the St. Croix boating season provided for a better opportunity to consider the needs of the public.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because operators of commercial vessels have indicated that they can adjust to the changes without impact on their businesses.

Small Entities

After considering the submitted comments, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard has reviewed the environmental impact of this temporary rule and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B, this temporary rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows. This is a temporary amendment and will not appear in the Code of Federal Regulations.

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

Authority: 33 U.S.C. 449; 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. In § 117.667 paragraph (b) is temporarily revised to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15, Monday through Friday, except Federal holidays, from:

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 2:30 p.m., every half hour;

(iii) 2:30 p.m. to 5:30 p.m., at 2:30 p.m., 4 p.m. and 5:30 p.m.;

(iv) 6:30 p.m. to 10 p.m., every half hour; and

(v) 10 p.m. to 8 a.m., upon at least two hours notice.

(2) from May 15 through October 15, Saturdays, Sundays, and federal holidays from:

(i) From 8 a.m. to 9 a.m., every half hour;

(ii) From 9 a.m. to 8 p.m., every hour on the hour;

(iii) From 8 p.m. to midnight, every half hour; and

(iv) Midnight to 8 a.m., upon at least two hours notice.

* * * * *

Dated: May 20, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 94–13541 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–031]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Core Creek, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the S.R. 101 bridge across the Atlantic Intracoastal Waterway, mile 195.8, Core Creek, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates the need for regulation.

EFFECTIVE DATE: These regulations become effective on July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Background and Purpose

The swing bridge across the Atlantic Intracoastal Waterway, mile 195.8, at Core Creek, North Carolina, was replaced by a high level fixed bridge along the same alignment. The existing bridge has been removed, thereby eliminating the need for 33 CFR 117.821(b)(3). This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.821(b) (4), (5) and (6) for the drawbridges at Surf City, Wrightsville Beach, and Sunset Beach along the Atlantic Intracoastal Waterway within North Carolina.

Regulatory History

This action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this ruling to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because the Coast Guard is removing regulations that are no longer necessary.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.821 [Amended]

2. In § 117.821, paragraph (b)(3) is removed and paragraphs (b)(4), (5) and (6) are redesignated as paragraphs (b)(3), (4) and (5).

Dated: May 16, 1994.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–13540 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore 94–003]

RIN 2115–AA97

Safety Zone Regulation; Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the purpose of the third annual Maryland "Swim For Life", at the request of the Maryland "Swim for Life" Committee of Baltimore, Maryland. The "Swim for Life" event will consist of a two and a one half mile swim to be held at the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland. The swim will start at Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. This safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation will be effective from 7 a.m. June 18, 1994 to 1 p.m. June 18, 1994 with an alternate date of June 19, 1994, encompassing the same time frame.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Timothy P. Ryan, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–2651.

SUPPLEMENTARY INFORMATION: On April 13, 1994 a notice of proposed rulemaking was published in the **Federal Register** (59 FR 17507) requesting comments on this event. As of May 13, 1994, which was the closure of the comment period, no comments were received. Since the Coast Guard wanted to provide the public the opportunity to make comments, insufficient time was left to provide for an effective date 30 days after publication, therefore this regulation will become effective in less than 30 days from the date of publication.

Background and Purpose

In November, 1993, an application was received by U.S. Coast Guard Group Baltimore from the Maryland Swim For Life Committee, requesting a safety zone for the "Swim For Life" event. This event is to be held in the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland, on June 18, 1994. As part of their application, the "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming portion of the event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as the swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder River will not be closed for an extended period, vessel traffic should not be severely disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Timothy P. Ryan, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart F of Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

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

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

2. In part 165 a temporary section 165.T05–019 is added to read as follows:

§ 165.T05–019 Safety Zone: Hammerman Area of the Gunpowder Falls State Park, Gunpowder State Park, Maryland.

(a) *Location.* The following area is a safety zone: All waters 500 yards either side of a line connecting the following points beginning at:

Latitude	Longitude
39°21.8′N.	76°20.4′W., thence to
39°21.6′N.	76°19.9′W., thence to
39°22.6′N.	76°20.2′W., thence to
39°21.8′N.	76°20.4′W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 13.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective dates.* This section is effective from 7 a.m. June 18, 1994, to 1 p.m. June 18, 1994; the alternate day will be June 19, 1994, encompassing the same time frame; unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: May 24, 1994.

G.S. Cope,

Captain, U.S. Coast Guard Captain of the Port Baltimore, Maryland.

[FR Doc. 94–13544 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–039]

RIN 2115–AA97

Safety Zone; Town of Old Lyme, CT Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Long Island Sound, around the fireworks barge Walrus located approximately 1500 feet south of Sound View Beach, Old Lyme, CT on July 2, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 9 p.m. through 9:45 p.m. on July 2, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain date of July 3, 1994, at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. The Coast Guard did not receive from the sponsor the final details concerning the event's times, which is essential information for the purposes of establishing a safety zone in sufficient time to publish a NPRM. If the event, which is centered around a national holiday, were required to be postponed by publishing a NPRM, the event would be cancelled. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The sponsor, the Town of Old Lyme, CT has requested that a 45 minute fireworks display, launched from a floating platform, be permitted in the port of Old Lyme in the vicinity of Sound View Beach, Old Lyme, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display which is occurring over Long Island Sound. The safety zone covers all waters of Long Island Sound within a 800 foot radius of the fireworks barge Walrus.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

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

Collection of Information

This rule 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 action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–039 is added to read as follows:

§ 165.T01–039 Safety Zone; Town of Old Lyme, CT Fireworks Display.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 800 foot radius of the barge Walrus, the fireworks launching platform, which will be located approximately 1500 feet south of Sound View Beach, Old Lyme, CT in approximate position 41°16′46″N, 072°16′25″W.

(b) *Effective date.* This section is effective from 9 p.m. through 9:45 p.m. on July 2, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain date of July 3, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: May 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–13542 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1220

RIN 3095–AA48

Agency Program Evaluations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule more fully describes agency and NARA responsibilities as part of the records management evaluations of Federal agencies that NARA conducts on a regular basis. It discusses the authority, purpose, and scope of these evaluations and describes specific agency requirements related to the evaluation notification, the evaluation process, transmittal of the report, and preparation of action plans and regular progress reports.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730 (FTS 301–713–6730) or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on December 10, 1993 (58 FR 64915) for a 30-day comment period. Subsequently, in a notice published on February 16, 1994 (59 FR 8150), NARA reopened the comment period for an additional 30-day period and announced a public meeting for agency records officers on February 28, 1994. Twenty-three written comments were received. Approximately 50 records officers attended the meeting held at the National Archives at College Park to discuss the proposed regulations. All comments received careful consideration in the development of the final rule. Following is a section-by-section discussion of the major issues raised in the public meeting and written comments.

Section by Section Analysis

Section 1220.14 General Definitions

One agency proposed changing the definition of evaluation to that included in NARA's *A Records Management Glossary.* NARA agrees and has changed the definition. In addition, language reflecting the followup aspect of an evaluation has been added.

One agency suggested that the use of "adequate and proper documentation" for consistency with current NARA regulations and published guides. This change has been made.

Section 1220.42 Agency Internal Evaluations

This requirement generated numerous comments and discussion. All comments noted that the proposed biennial evaluation of an agency's records management program would place an unnecessary burden on agencies that already have limited resources for records management. One agency pointed out that the Paperwork Reduction Act requires triennial reviews of information management programs. Other agencies commented that this proposed rule seems inconsistent with the intent of the current mandates to reinvent government and streamline government operations.

Because of the burden a biennial reporting requirement would impose on agencies this proposed requirement has been dropped. The requirement that an agency "should periodically evaluate its records management programs * * *" that was contained in the superseded regulation at § 1220.54 is retained in this regulation. NARA is developing additional guidance to aid agencies in performing self-evaluations of their records management programs.

Section 1220.50 Authority

One agency suggested that NARA should be required to estimate costs incurred by implementation of NARA evaluation report recommendations which an agency agrees to implement and that reports to Congress, OMB, or other oversight agency, should include an agency's success stories.

To the extent that NARA can identify and obtain cost information, it will be included in any reports to Congress. NARA's policy is to always include agency success stories in final evaluation reports, whether or not the reports are to be submitted to Congress.

Section 1220.52 Purpose and Scope

Three agencies suggested clarifications. Two agencies commented that NARA does not quantify the efficacy of Federal agencies efforts to make and preserve complete and accurate records but rather that NARA reviews records management programs. NARA has modified this section to indicate that evaluations assess records management programs. This more accurately describes the evaluation process as a cooperative effort.

One agency noted the misuse of "inter-agency" in describing a single agency evaluation focusing on all aspects of records management at all administrative levels. The phrase "inter-agency" has been changed to "one agency."

Section 1220.54 NARA Evaluation Process

Selection Process

Several agencies suggested changes in the selection criteria used by NARA. Suggested alternatives included conducting an evaluation only upon request; setting an evaluation cycle; and identifying agencies that have significantly changed patterns of use of Federal records centers. Attendees at the records officer meeting and the majority of written comments agreed with the criteria proposed in the notice of proposed rulemaking. This section has not been changed in the final rule.

Two agencies questioned the meaning of "perceived need" and "compliance monitoring cycle." Perceived need means NARA's knowledge of agency operations as they apply to the records management program. This includes retirement patterns of records to FRCs, the transfer of permanent records to NARA, and scheduling activities by the agency. The compliance monitoring cycle, to be developed by NARA, is a method of tracking the cyclical review of agencies.

Method of Notification

Two agencies suggested that the NARA letter of notification should specify the scope of the evaluation to enable agencies to make adequate preparations. Another agency stated that the agency head or his/her designee will determine who will carry out responsibilities stipulated in the regulations. Another agency suggested that the regulations regarding agency response exceeds NARA's authority to direct the internal operation of the agency concerning the individuals to be notified of the evaluation.

NARA agrees and made appropriate changes.

Provision of Information Prior to an Evaluation

Two agencies noted that NARA has all approved agency schedules; two

agencies found the requirement to provide all issuances relating to records management to be onerous; one agency objected to providing a list of agency information systems not currently covered by schedules; one agency noted that contractors will have serious reservations about making records with proprietary and trade information available to NARA; and one agency objected to the tone of this section.

Becoming familiar with an agency's records management program, including the program's internal requirements, is an important preliminary step for NARA prior to beginning an evaluation. However, NARA agrees that most relevant information is available in a limited number of agency issuances and NARA does have copies of all approved agency schedules. Section 1220.54(b)(4) has been changed to reflect this.

The maintenance of a list of agency information systems is required by OMB Circular A–130, section 9a(5), so providing this information to NARA should not impose an additional burden. NARA will use this list to determine which systems have not been scheduled.

36 CFR 1222.48(e) states that "All data created for Government use and delivered to, or falling under, the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation * * *" Records created by contractors for the agency are Federal records and as such are included in NARA's evaluation authority. NARA staff are trained to handle agency records containing sensitive information appropriately.

Section 1220.56 Evaluation Report

Report Distribution

The distribution requirements of the final report generated comments and discussion. Some agency representatives think that distribution should be limited to individuals and offices affected by findings and recommendations, while others thought the reports should be widely distributed. One agency suggested that the final report should be sent to the Agency Records Officer with a copy to the agency head.

While NARA thinks that a wide distribution of the report within an agency will help to highlight the importance of proper records management, it is appropriate that the agency determine the internal distribution of a report. The final report is issued under the signature of the Archivist of the United States and should be transmitted to his or her equivalent at the agency. Additionally, sending the report to the agency head will ensure that he or she is aware of the evaluation and this action may heighten awareness of the agency records management program at the highest level of agency management.

NARA agrees that the agency should determine the distribution of the final report within the agency. The language of the regulation has been changed to read "Distribute the final report to all concerned and appropriate persons and offices."

Reporting Deadlines and Draft Report

Agencies commented that, while the regulations specify reporting deadlines for agencies to respond to an evaluation, there is no time limit for NARA to finalize the report. One agency suggested that this section indicate that the 120-day period NARA has to provide a draft report to the agency begins following the last site visit or final exit briefing.

NARA agrees and changed the regulation to add that NARA will produce the draft report within 120 days following the last site visit or final exit briefing and that the final report will be sent to the head of the agency within 30 days after receiving agency comments on the draft report.

One agency suggested that agencies should be allowed to comment on the recommendations when commenting on the factual contents of the report. This is standard practice when reviewing an audit or evaluation report. If an agency chooses to comment on the recommendations at this stage, the comments will allow NARA to identify potential problems that may develop during the followup actions. Furthermore, such comments may clarify an agency's internal operations for NARA and allow the development of a more appropriate recommendation. The regulation has been changed accordingly.

Two agencies suggested that the provision in the current § 1220.52(b)(1) giving agencies the right to provide rationale in the action plan for not implementing a recommendation be included in the revised regulations. NARA agrees that an agency should have the right to provide rationale for not implementing a recommendation if it is unable to do so. Section 1220.58(a)(1)(ii) has been amended accordingly.

Section 1220.58 Agency Action Plans and Progress Reports

One agency requested a 120 day period after receiving the final report submitting an action plan to NARA, stating that this extension is important for agencies that are deficient in many areas. NARA thinks that 90 days is an adequate period for most agency to prepare an action plan. However, the regulation has been changed to allow for agencies to request an extension.

One agency commented extensively on NARA's proposed requirement that agencies provide individual action plans for evaluated field sites. They noted that such reports are an unauthorized interagency reporting requirement; there is no indication that NARA would analyze field action plans and provide feedback to the agency about them; and without periodic status reports, there is no value to the action plans.

The value of including individual site summaries in the final report has been proven in previous evaluations. NARA intends to continue this practice. In order to track followup actions at these individual sites, it may be necessary to request individual action plans. If this is the case, NARA will analyze them and provide feedback. The language of the regulation has been changed to reflect this intention.

One agency suggested that estimating the month and year for starting and completing each action is unrealistic; proposed quarters and years would be better. NARA agrees and has changed the regulation accordingly.

In response to a suggestion from one agency, NARA added criteria for closing recommendations to this section of the regulation.

One agency suggested that the action plan be submitted by the agency head or Designated Senior Official for Information Resources Management rather than "senior management official responsible for records and information management." We have made this change.

One agency noted that the requirement to provide the name of officials or offices specifically responsible for initiating and completing each proposed action is extensive. NARA agrees that it is appropriate for the agency to determine who will track individual recommendations. The regulation has been changed to require the agency head to designate an individual who will serve as NARA's contact for evaluation followup.

Section 1220.60 Followup Notification and Reviews

One agency suggested that reporting to Congress and/or appropriate Federal oversight agencies of evaluation findings and agency response be mandatory. Other agencies commented that reporting to Congress would be a

valuable tool to use to highlight the importance of records management in agencies. The majority opinion is that NARA should send every evaluation report to Congress or the appropriate Federal oversight agency.

One agency said that NARA should be required to provide agencies with the factors by which NARA determines that an agency is not progressing in a satisfactory manner and that the agency head should be notified before NARA reports to Congress.

If NARA determines that there has been insufficient progress in fully implementing recommendations or that the agency has not corrected problems identified by NARA, then NARA will notify the head of the agency. After the head of the agency has been notified, NARA may also notify the appropriate oversight agencies or appropriate Congressional committees. Section 1220.60 has been changed accordingly.

Other Comments

In the preamble to the proposed rule, NARA asked for specific comments on NARA's selection criteria and criteria for performance measurement. Comments received on selection criteria are discussed under the heading "SELECTION PROCESS" above. Several agencies * * * commented on criteria for performance measurement. One agency suggested that "one approach would be to establish a baseline for specific functions/responsibilities via a status survey and to monitor improvement progress for those functions." Another agency suggested that a performance measurement could be "how well agencies * * * carry out recommendations without follow-up notification and reviews." Another idea is "whether violations of applicable laws or regulation * * * has been corrected timely." Other commentators suggested that NARA conduct a government-wide survey of all Federal agencies' records management programs. Such a survey would provide an initial starting point for identifying problems or regulations that are difficult to implement and enforce.

NARA plans to develop performance measurements that will help determine how effectively agencies are implementing evaluation recommendations. NARA also plans to develop measures to assess the success of its evaluation program in terms of programmatic improvements or improved work products.

Three agencies offered general comments on the evaluation process. One agency would like to see NARA conduct studies of more agencies in shorter time frames and then share the findings government-wide. This would be "more beneficial to the government and an improved use of limited NARA resources." One agency thinks the time frame (13 months) to conduct an evaluation is too excessive.

NARA will continue to conduct full evaluations of agency records management programs. Additionally, in FY95 NARA will begin conducting additional shorter and more focused evaluations.

Another agency suggested that, while NARA evaluations are similar to GSA IRM reviews, they are conducted very differently. GSA, for example, takes steps to prepare agencies for reviews by using standard scoping questionnaires and with self assessment tools that are linked to their evaluation process. GSA issues its cyclical review schedule each year so agencies know well in advance when they can expect to be reviewed and can prepare for it. Since NARA only notifies an agency 60 days before an evaluation, this can result in agencies being more surprised than prepared and the evaluation can become a negative rather than a positive experience.

We agree that earlier notification would assist agencies being evaluated, and have modified § 1220.54 (a) to provide the notice of a planned evaluation at least 180 days in advance. NARA also intends to work with the appropriate office in GSA to determine how best to coordinate the evaluation processes of both agencies.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1220

Archives and records.

For the reasons set forth in the preamble, part 1220 of the title 36 Code of Federal Regulations is amended as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. In § 1220.14, the term *Evaluation* is added in alphabetical order to read:

§ 1220.14 General definitions.

* * * * *

Evaluation means the selective or comprehensive inspection, audit, or review of one or more Federal agency records management programs for effectiveness and for compliance with applicable laws and regulations. It includes recommendations for correcting or improving records management policies, procedures, and activities, and follow-up activities, including reporting on such activities, for implementing the recommendations.

* * * * *

3. Section 1220.42 is added to subpart B to read as follows:

§ 1220.42 Agency internal evaluations.

Each agency should periodically evaluate its records management programs relating to adequate and proper documentation, maintenance and use of records, and records disposition. These evaluations should determine compliance with NARA regulations in Subchapter B and assess the effectiveness of the agency's programs. Criteria for agency self-evaluations are available from NARA's Office of Records Administration, Agency Services Division (NIA).

4. Subpart C is revised to read as follows:

Subpart C—NARA Evaluation Program

Sec.
1220.50 Authority.
1220.52 Purpose and scope.
1220.54 Evaluation process.
1220.56 Evaluation report.
1220.58 Agency action plans and progress reports.
1220.60 Followup notification and reviews.

Subpart C—NARA Evaluation Program

§ 1220.50 Authority.

44 U.S.C. chapter 29 vests in the Archivist of the United States the responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation and proper records disposition. Sections 2904 and 2906 specifically authorize the Archivist to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies and require officers and employees of agencies to cooperate fully in such inspections. Section 2904 also authorizes the Archivist to report to the appropriate oversight and appropriations committees of the Congress and the Director of OMB on the results of inspections, the responses by agencies to NARA evaluation recommendations, and estimates of the costs to the Federal government resulting from the failure to implement such recommendations.

§ 1220.52 Purpose and scope.

(a) NARA evaluations assess how effectively Federal agencies make and

preserve complete and accurate records of their organization, functions, policies, decisions, procedures, and essential transactions; and maintain an active, continuing records management program including proper records disposition. Agencies shall be evaluated for compliance with requirements in 44 U.S.C. chapters 31 and 33 and all the regulations issued thereunder in 36 CFR subchapter B.

(b) NARA evaluations may include comprehensive reviews of agency records management programs, or selective reviews focused on adequate and proper documentation, on records disposition, on the management of specific types of record media or on the management of records in particular program areas. NARA evaluations may be of one agency or may be multi-agency. These evaluations may be conducted solely within headquarters offices, only at field locations, or at a combination of field sites and headquarters.

(c) Evaluations will involve site visits by NARA; submission by NARA to the agency of a written report containing findings, analyses, and recommendations; and submission to NARA by the agency of an action plan for implementing the recommendations followed by regular progress reports. Interagency report control number 0153–NARA–AR has been assigned to the action plan and progress reports in accordance with 41 CFR subpart 201–45.6.

§ 1220.54 Evaluation process.

(a) NARA shall select Federal agencies to be evaluated on the basis of perceived need by NARA or specific request by the agency, or on the basis of a compliance monitoring cycle developed by NARA. NARA will determine the scope of the evaluation. An agency may request an evaluation of its records management program by contacting the Assistant Archivist for Records Administration; however, the final determination of agencies to be evaluated will be made by NARA. The heads of agencies will be notified in writing by the Archivist of the United States of the intent to conduct an evaluation and the scope of the evaluation at least 180 calendar days prior to initiating the evaluation.

(b) Once NARA has notified the agency, the agency head will, by the date specified in the Archivist's letter:

(1) Acknowledge in writing NARA's intention to evaluate, and provide the Archivist with the name and telephone number of the senior official with overall responsibility for records management and of a headquarters official who will work with NARA to facilitate the evaluation process;

(2) Provide written notification of the evaluation to all appropriate offices and employees and contractors potentially involved; this notification will include instructions to cooperate with NARA by setting up interviews, providing requested information, and making records available for inspection;

(3) Provide NARA with a copy of the written notification in paragraph (b)(2) of this section and with a list of names and telephone numbers of officials responsible for records management in field sites, if applicable, who will work with NARA during the evaluation;

(4) For comprehensive evaluations, provide NARA with a set of internal records management directives, orders, bulletins, or similar authoritative issuances; copies of the two most recent internal records management evaluations; and any special records-related reports. Included may be: issuances relating to adequate and proper documentation and recordkeeping requirements; personal papers; management and disposition of textual, electronic, audiovisual, cartographic and architectural, micrographic, and vital records; disaster mitigation and recovery; and any other records-related documentation requested by NARA. A subset of this documentation will be requested for more limited evaluations;

(5) Provide NARA with a current version of the agency manual(s) covering records creation, maintenance, storage, and disposition, and a list of information systems maintained as required by OMB Circular A–130, section 9a(5), and a list of offices and/or functions and activities not currently covered by schedules;

(6) Arrange for appropriate management and program officials in headquarters and, if applicable, at field sites to be briefed by NARA at the beginning and at the end of the evaluation process; and

(7) Take immediate corrective action regarding any serious problems that NARA may bring to the agency's attention during the course of the evaluation process such as the unauthorized destruction of records or the unauthorized donation or other transfer of records to non-NARA facilities.

§ 1220.56 Evaluation report.

(a) NARA will submit a draft evaluation report for factual review and comment to the agency within 120 calendar days of the last evaluation site visit or exit briefing. After receipt of agency comments, NARA will finalize the report, incorporating any changes resulting from factual errors identified by the agency. The final report will be transmitted by the Archivist to the head of the agency within 30 calendar days of receiving comments from the agency.

(b) The head of the agency will:

(1) Comment within 60 calendar days, in writing, on the contents of the draft report. If necessary, agencies can request extensions. No response from the agency within the allotted time will indicate that the agency concurs in the factual accuracy of the draft report.

(2) Review the final report and assign implementation responsibility; and

(3) Distribute the final report to all concerned and appropriate persons and offices.

§ 1220.58 Agency action plans and progress reports.

(a) *Action plans.* (1) The action plan will be submitted to NARA within 90 calendar days after the date of transmittal of the final report. If necessary, agencies can request extensions. The plan shall be submitted by the agency head or the designated senior official for information resources management. The action plan will include:

(i) The name of the senior official and the office responsible for coordinating implementation agency-wide;

(ii) The specific action(s) the agency will take to implement each evaluation report recommendation. If an agency is unable to implement a recommendation, the rationale for not acting shall be documented in the action plan;

(iii) The name of the official and office or program responsible for the overall coordination of the agency's followup actions who will be the liaison with NARA;

(iv) The estimated time needed to complete each action and the proposed quarter and year for starting and completing each action;

(v) Major milestones with dates for tracking the completion of implementation actions that are expected to extend longer than 3 years past the date of the action plan; and,

(vi) If requested by NARA, separate action plans for each field site visited, incorporating the information required by paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(2) NARA will analyze the action plan(s) submitted by the agency for adequacy and effectiveness in implementing the recommendations contained in the evaluation report. NARA will provide comments to the agency on the plan(s) within 60 calendar days.

(3) The agency will revise the action plan until it is approved by NARA.

(b) *Progress reports.* (1) Once the action plan(s) has been approved by NARA, the head of the agency will submit progress reports to NARA every 6 months. The reports will include:

(i) A description of what has been accomplished on each action since the last report;

(ii) The current status of the action;

(iii) Any changes in the offices or programs responsible for over-all or specific action implementation; and,

(iv) If appropriate, explanation of any delays in implementation and revised target dates and milestones for completion of the action.

(2) The agency will continue to submit these progress reports until NARA and the agency agree all actions have been completed, NARA and the agency agree that the agency has implemented the recommendation(s) to the fullest extent possible, or NARA indicates in writing that regular progress reports are no longer required.

(3) NARA will review and comment on agency progress reports, and work closely with the agency to provide assistance in evaluation implementation.

§ 1220.60 Follow-up notification and reviews.

(a) If NARA determines that there is not substantial progress in the full implementation of evaluation recommendations or that the agency has not corrected serious problems identified in the report, the Archivist, after notifying the head of the agency, may notify Congress and appropriate Federal oversight agencies of the evaluation findings and the agency response.

(b) NARA may initiate follow-up reviews at specific offices or field sites. Results of these follow-up reviews shall be communicated to the head of the agency and, if NARA determines it to be appropriate, to Congress and Federal oversight agencies.

Dated: May 25, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-13517 Filed 6-2-94; 8:45 am]

BILLING CODE 7515-01-W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI17-01-5761; FRL-4886-7]

Approval and Promulgation of a Small Business Technical and Environmental Compliance Assistance Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA approves the Michigan State Implementation Plan (SIP) revision submitted by the State of Michigan for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. The rationale for the approval is set forth in this notice; additional information is available at the addresses indicated below.

EFFECTIVE DATE: This action will be effective August 2, 1994 unless notice is received by July 5, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments can be mailed to Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604. Copies of the State's submittal and the EPA's technical support document are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, and Michigan Department of Natural Resources, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan 48909.

A copy of this SIP revision is also available at the Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Chris Campbell, USEPA (AT-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6324.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the Act requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the Act directs the EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the Act. In February 1992, the EPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments" to delineate the Federal and State roles in meeting the new statutory provisions and to provide further guidance to the States on submitting acceptable SIP revisions.

In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the PROGRAM.

In order to satisfy the requirements of section 507, on November 11, 1992, January 8, 1993, and November 12, 1993, the State of Michigan submitted a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a revision to its SIP. The November 12, 1993 submittal included the Michigan Small Business Clean Air Assistance Act of 1993.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements[1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

The State has met this requirement by establishing the Air Quality Small Business Assistance Program (AQSBAP) and requiring it to develop this aspect of the SBAP. The AQSBAP outreach program will coordinate activities with existing groups that represent small businesses' interests and/or come in contact with large numbers of small businesses. As new standards and requirements are promulgated, the AQSBAP will translate the requirements into understandable terms and disseminate the information through these organizations, which include the Michigan Department of Natural Resources Air Quality Division (MDNR AQD), the Small Business Clean Air Ombudsman (SBCAO), the Michigan Department of Public Health, local emergency planning committees, trade associations, chambers of commerce, newspapers, business and trade journals, economic development groups, universities, and electronic databases. The AQSBAP will also seek participation in these organizations' conferences and meetings. In addition, the AQSBAP will develop a client tracking system to help assess program needs, and to develop small business mailing lists. To address reactive information needs, the AQSBAP will assist in operating an "800" telephone clearinghouse service which will be able to provide technical assistance. To address the program's technical resource needs, the AQSBAP will provide its own technical specialists, as well as develop mechanisms for obtaining additional technical support from appropriate Federal, State, and other organizations. The AQSBAP will also develop an air quality resource center, which will be available to the AQSBAP technical specialists.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

The State has met this requirement by promoting pollution prevention and offering technical assistance through the AQSBAP and several existing programs also within the Environmental Sciences Division (ESD). The AQSBAP and the Office of Waste Reduction Services will help businesses locate and take advantage of pollution prevention opportunities. The AQSBAP and the Education/Outreach program will work together in the development of fact sheets and case studies which highlight pollution prevention technologies. In addition, these programs will jointly participate in seminars and workshops. The AQSBAP will address accidental release detection and prevention by training technical specialists in these practices and technologies. General questions will be addressed by these specialists, and complex questions will be referred to the EPA's Chemical Emergency Preparedness and Prevention Office, or the Emergency Planning and Community Right-to-Know Hotline. State organizations, including the State Emergency Response Commission, the Michigan Chemical Council, the Emergency Management Division of the Michigan Department of State Police, and the Michigan Department of Public Health will also be used as resources. The outreach program described in the first requirement above will be used to distribute publications and information about upcoming workshops on accidental release prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

The State has met this requirement by providing an "800" number and by offering individual meetings to provide one on one compliance assistance. The AQSBAP technical specialists will be able to identify applicable air quality regulations, determine whether or not a permit is needed, identify methods for achieving compliance, and explain the permitting procedures. The AQSBAP will use the outreach methods described in the first requirement above to disseminate information regarding new standards and requirements.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by establishing information dissemination mechanisms to ensure that small business stationary sources receive notice of their rights under the Act. The AQSBAP and the MDNR AQD will develop a fact sheet that notifies small businesses of their rights under the Act and Michigan's Air Pollution Act, and explains the legal recourse should they be notified of a violation. This information will be provided during site visits and presentations at trade association meetings, and will be uploaded on the NEWBIZ computer database. The AQSBAP will also develop and disseminate through the outreach program timely fact sheets notifying small businesses of proposed and final regulations issued under the Act that affect their businesses.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act.

The State has met this requirement by establishing information dissemination mechanisms to ensure that small business stationary sources receive notice of their obligations under new regulations. These mechanisms are the same as those listed above for notifying sources of their rights. In addition, the AQSBAP will develop and distribute a list of consultants that can provide air quality audits of small businesses. The AQSBAP will also develop a fact sheet that helps small businesses select a reputable auditor. In addition, the AQSBAP will investigate the feasibility of implementing its own voluntary audit program.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State has met this requirement by addressing such requests under Modification to Act 348, Part 6 Rules,

[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

which contains the procedures that businesses must follow in obtaining approval for such a request. Responses to requests relating to Federal standards will be coordinated with the EPA. The AQSBAP will assist small businesses in identifying these procedures.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the Small Business Clean Air Ombudsman (SBCAO) and the Office of the SBCAO within the Michigan Department of Commerce. The SBCAO is required to represent the interests of small businesses, and to assure that the goals of the AQSBAP are met. The SBCAO is required to perform many duties, including: Conducting evaluations of all aspects of the program; reviewing and commenting on requirements that impact small businesses; facilitating and promoting small business participation in rule development; disseminating information; participating and sponsoring meetings with regulatory officials, industry groups, and small business representatives; investigating and resolving complaints and disputes from small businesses against State or local air pollution control agencies; referring small businesses to the appropriate technical specialists; assisting in the preparation of small business guidance documents; assisting small businesses in locating financial assistance for compliance requirements; and studying the financial impacts of requirements on small businesses. It is expected that the Governor will be making the Ombudsman appointment by June 1994, but no later than November 1, 1994.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The State has met this requirement by establishing a CAP which includes these appointments. The enabling legislation also outlines general policies and procedures for administering the CAP. As of April 1, 1994, five of the seven CAP appointments had been made. All CAP appointments will be completed by June 1994, but no later than November 1, 1994.

In addition to establishing the minimum membership of the CAP, the Act delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by requiring the CAP to meet these responsibilities. In addition, the AQSBAP and the SBCAO staff will provide support to the CAP in its efforts to carry out these responsibilities.

4. Eligibility

Section 507(c)(1) of the Act defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Michigan's Small Business Clean Air Assistance Act similarly defines the term "small business," and expands criterion (C) to include major stationary sources which are major because of their location in a nonattainment area. To avoid discouraging businesses from seeking assistance, Michigan intends to use a flexible definition of small business when implementing the program. The type of service and the amount of resources necessary to carry out the service will dictate whether a broad or narrow eligibility definition is used. This is consistent with section 507(c)(2) of the Act.

The State of Michigan has provided for public notice and comment on grants of eligibility to sources that both do not emit more than 100 tpy of all regulated pollutants and do not meet the eligibility provisions of sections 507(c)(1) (C), (D), and (E) of the Act. In response to such a petition by a stationary source, the Director of the MDNR may define a source as a "small business." This is consistent with section 507(c)(2) of the Act.

The State of Michigan has provided for exclusion from the "small business" definition for any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. The Director of the MDNR may exclude such sources after consultation with the EPA and the Small Business Administration and after providing notice and opportunity for public hearing. This provision is consistent with section 507(c)(3).

III. Final Rulemaking

Michigan has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the Act. The PROGRAM will be fully implemented by November 15, 1994.

Because the EPA considers this final rule noncontroversial and routine, we are approving it today without prior proposal. This rule will become effective on August 2, 1994. However, if we receive notice by July 5, 1994 that someone wishes to submit adverse comments, then the EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

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

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

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

OMB has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program, Incorporation by reference.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1994.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, 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. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(94) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(94) On November 13, 1992, January 8, 1993, and November 12, 1993, the State of Michigan submitted a Small Business Stationary Source Technical and Environmental Assistance Program for incorporation in the Michigan State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(a) Small Business Clean Air Assistance Act, Act No. 12, Public Acts of 1993, approved by the Governor on April 1, 1993, and effective upon approval.

3. Section 52.1184 is added to read as follows:

§ 52.1184 Small business stationary source technical and environmental compliance assistance program.

The Michigan program submitted on November 13, 1992, January 8, 1993, and November 12, 1993, as a requested revision to the Michigan State Implementation Plan satisfies the requirements of section 507 of the Clean Air Act Amendments of 1990.

[FR Doc. 94–13496 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7057

[AK–932–4210–06; F–88329]

Withdrawal of Public Lands for Protection of the Coldfoot Administrative Site, Visitor Centers, and Campground; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 100 acres of public lands from settlement, sale, location, or entry under the general land laws, and from location and entry under the United States mining laws, but not from mineral leasing, for a period of 20 years for the Bureau of Land Management to protect an administrative site, visitor centers, and a public campground at Coldfoot, Alaska.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Coldfoot administrative site, visitor centers, and campground:

Fairbanks Meridian (Unsurveyed)

Parcel 1 (Visitor Center)

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, N. 75° W., approximately 180 feet to corner No. 1;

Thence, N. 40° E., approximately 570 feet to corner No. 2;

Thence, N. 18°30′ W., approximately 480 feet to corner No. 3;

Thence, S. 49°30′ W., approximately 1,020 feet to corner No. 4;

Thence, S. 60° E., approximately 330 feet to corner No. 5;

Thence, S. 75° E., approximately 300 feet to close at corner No. 1.

This parcel contains approximately 8.80 acres.

Parcel 2 (Visitor Center)

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, S. 89° W., approximately 210 feet to corner No. 1;

Thence, N. 75° W., approximately 270 feet to corner No. 2;

Thence, N. 60° W., approximately 360 feet to corner No. 3;

Thence, S. 49°30′ W., approximately 840 feet to corner No. 4;

Thence, S. 60° E., approximately 810 feet to corner No. 5;

Thence, N. 40° E., approximately 900 feet to close at corner No. 1.

This parcel contains approximately 15 acres.

Parcel 3 (Visitor Center)

A parcel of land lying within sec. 15, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, S. 77° E., approximately 100 feet to corner No. 1;

Thence, continuing S. 77° E., approximately 750 feet to corner No. 2;

Thence, N. 40° E., approximately 360 feet to corner No. 3;

Thence, N. 77° W., approximately 750 feet to corner No. 4;

Thence, S. 40° W., approximately 360 feet to close at corner No. 1;

This parcel contains approximately 4.60 acres.

Parcel 4 (Administrative Site)

A parcel of land lying within the E½ of sec. 23, and the W½ of sec. 24, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23;

Thence, N. 61°30′ E., approximately 875 feet to corner No. 1;

Thence, S. 69°06′ E., approximately 344 feet to corner No. 2;

Thence, S. 23°50′ E., approximately 429 feet to corner No. 3;

Thence, S. 62°07′ E., approximately 306 feet to corner No. 4;

Thence, S. 75°27′ E., approximately 704 feet to corner No. 5;

Thence, S. 66°11′ E., approximately 795 feet to corner No. 6;

Thence, N. 23°48′ E., approximately 480 feet to corner No. 7;

Thence, N. 66°11′ W., approximately 465 feet to corner No. 8;

Thence, N. 54°31′ W., approximately 1,880 feet to corner No. 9;

Thence, S. 36°21′ W., approximately 696 feet to close at corner No. 1.

This parcel contains approximately 35 acres.

Parcel 5 (Campground)

A parcel of land lying within the S½ of sec. 23, and the N½ of sec. 26, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23;

Thence, S. 13°30′ W., approximately 1,020 feet to corner No. 1;

Thence, S. 40°30′ E., approximately 600 feet to corner No. 2;

Thence, S. 23° E., approximately 200 feet to corner No. 3;

Thence, S. 70° E., approximately 900 feet to corner No. 4;

Thence, N. 20°30′ E., approximately 1,150 feet to corner No. 5;

Thence, N. 70° W., approximately 1,580 feet to corner No. 6;

Thence, S. 19° W., approximately 720 feet to close at corner No. 1.

This parcel contains approximately 36.60 acres.

The areas described aggregate approximately 100 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13572 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–JA–P

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43 CFR Public Land Order 7058

[AZ–930–4210–06; AZA–26437]

Withdrawal of National Forest System Land for the Sears-Kay Ruin Interpretative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 160 acres of National Forest System land from location and entry under the United States mining laws for 50 years for the purpose of protecting the Sears-Kay Ruins Interpretive Site. The land has been and will remain open to the mineral leasing laws and other surface uses applicable to National Forest System land authorized by the Forest Service.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investment and the archeological values of the Sears-Kay Ruin Interpretive Site:

Gila and Salt River Meridian

Tonto National Forest

T. 6 N., R. 5 E.,

Sec. 2, E½SW¼, E½NW¼SW¼, and E½SW¼SW¼;

Sec. 11, NE¼NW¼.

The area described contains 160 acres in Maricopa County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13578 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–32–P

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43 CFR Public Land Order 7059

[ID–943–4210–06; IDI–29260]

Withdrawal of Public Land for Big Wood River Geological Sites; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 309 acres of public lands from the mining laws only, for a period of 50 years for the Bureau of Land Management to protect the Big Wood River Geologic Sites. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location, or entry under the United States Mining laws (30 U.S.C. Ch, 2 (1988)), but not from leasing under the mineral leasing laws, to protect several unique Bureau of Land Management geologic sites:

That public land lying on either side of the actual center line of the Big Wood River Channel measured perpendicular to each center line segment. Segments 1 (one) and 3 (three) are 200 feet wide (100 feet on either side of channel center line). Segments 2 (two), 4 (four), 5 (five), 6 (six) and 7 (seven) are 300 feet wide (150 feet on either side of channel center line).

The following descriptions define the center line for those segments of the Big Wood River channel to be withdrawn. Any differences between these courses and the actual river center line are intended to be settled in favor of the actual channel center line location.

The point of beginning for each river segment is tied to the true point of beginning which is the corner common to Sections 32 and 33, T. 2 S., R. 18 E., Boise Meridian and Sections 4 and 5, T. 3 S., R. 18 E., Boise Meridian. All bearings and distances are approximate.

From the true point of beginning, N 88°15′51″ E., 1088.05 ft. to the point of beginning of segment No. 1.

Thence:
S 43°59′19″ E., 683.93 ft.;
S 69°51′30″ E., 407.84 ft.;
S 13°27′17″ E., 744.43 ft.;
S 88°59′17″ E., 735.49 ft.;
S 22°59′45″ E., 470.45 ft.;
S 08°24′20″ W., 404.92 ft.;
S 55°26′40″ E., 429.74 ft.;
S 23°56′56″ E., 491.71 ft.;
S 27°56′04″ E., 556.80 ft.;
S 27°39′57″ E., 365.96 ft.;
S 38°30′53″ E., 371.51 ft.;
S 21°32′11″ E., 295.66 ft.;
N 83°11′03″ E., 647.91 ft.;
S 71°32′45″ E., 387.64 ft.;
S 05°27′59″ E., 866.34 ft.;
S 23°44′04″ E., 536.87 ft.;
S 49°27′34″ E., 425.93 ft.;
S 13°08′00″ W., 535.89 ft.;
S 15°13′25″ W., 578.48 ft.;
S 30°16′31″ W., 426.33 ft.;
S 28°12′50″ W., 421.32 ft.; from which the true point of beginning bears N 33°58′06″ W., 9349.74 feet distant.

From the true point of beginning, S 30°37′11″ E., 10,442.10 feet to the point of beginning of segment No. 2.

Thence:
S 07°31′22″ W., 551.58 ft.;
S 48°12′40″ W., 908.45 ft.;
S 46°14′41″ W., 404.50 ft.; from which the true point of beginning bears N 21°47′54″ W., 11,208.77 ft. distant.

From the true point of beginning, S 20°35′09″ E., 16,508.89 feet to the point of beginning of segment No. 3.

Thence:
S 07°44′43″ E., 251.55 ft.;
S 03°51′33″ E., 249.90 ft.; from which the true point of beginning bears N 19°55′41″ W., 16,994.28 feet distant.

From the true point of beginning, S 04°35′14″ E., 23,660.56 feet to the point of beginning of segment No. 4.

Thence:
S 26°37′12″ E., 593.24 ft.;
S 05°23′08″ W., 548.57 ft.;
S 24°30′21″ W., 509.82 ft.;
S 03°43′11″ E., 532.53 ft.;
S 10°22′30″ W., 624.26 ft.;
S 46°42′22″ E., 476.70 ft.;
S 29°45′27″ E., 399.96 ft.;
S 30°54′21″ E., 385.95 ft.; from which the true point of beginning bears N 04°56′39″ W., 27,368.43 feet distant.

From the true point of beginning, S 08°54′35″ E., 32,444.82 feet to the point of beginning of segment No. 5.

Thence:
S 84°59′22″ E., 675.19 ft.;
N 74°25′54″ E., 697.25 ft.;
N 65°32′30″ E., 1205.49 ft.;
S 86°44′40″ E., 1041.29 ft.;
S 66°51′26″ E., 465.63 ft.; from which the true point of beginning bears N 15°49′05″ W., 32,915.05 feet distant.

From the true point of beginning, S 16°56′04″ E., 36,970.13 feet to the point of beginning of segment No. 6.

Thence:
S 28°41′46″ E., 769.01 ft.;
S 08°03′39″ W., 868.29 ft.;
S 44°41′51″ E., 262.17 ft.;
N 81°25′25″ E., 432.36 ft.;
S 05°48′32″ E., 616.57 ft.;
S 30°50′46″ E., 358.83 ft.;
S 13°33′15″ W., 507.06 ft.;
S 07°26′41″ E., 495.92 ft.;
S 11°33′16″ E., 628.92 ft.; from which the true point of beginning bears N 16°50′49″ W., 41,313.36 feet distant.

From the true point of beginning, S 17°38′22″ E., 42,514.59 feet to the point of beginning of segment No. 7a.

Thence:
S 25°19′17″ W., 818.16 ft.;
S 10°38′18″ E., 406.96 ft.;
S 25°26′56″ E., 311.54 ft.;
S 47°35′28″ W., 573.54 ft.;
S 04°35′37″ W., 339.23 ft.;
S 51°35′25″ W., 410.21 ft.;
S 57°21′48″ W., 330.74 ft.;
S 04°27′18″ W., 533.36 ft.;
S 60°20′02″ W., 574.09 ft.;
S 81°02′43″ W., 952.34 ft.;
S 14°13′23″ W., 1005.96 ft.;
S 20°29′33″ W., 744.18 ft.;
S 53°05′46″ W., 514.46 ft.;
S 02°52′29″ E., 607.70 ft.;
S 10°05′41″ W., 583.33 ft.;
S 55°25′33″ W., 658.18 ft.;
S 16°45′53″ E., 462.20 ft.;
S 66°32′33″ W., 527.00 ft.;
S 77°24′38″ W., 692.24 ft.;
S 51°07′32″ W., 471.41 ft.;
S 67°22′31″ W., 508.67 ft.;
S 48°21′43″ W., 783.98 ft.;
S 42°33′53″ W., 582.70 ft.; from which the true point of beginning bears N 06°39′56″ W., 50,181.07 feet distant.

From the true point of beginning, S 12°32′21″ E., 46,124 feet to the point of beginning of segment No. 7b.

Thence:
S 12°57′51″ E., 393.87 ft.;
S 49°34′36″ E., 135.82 ft.;
S 17°46′05″ E., 388.98 ft.;
S 02°35′03″ E., 367.77 ft.;
S 65°14′45″ W., 323.55 ft.;
S 42°37′11″ E., 239.80 ft.;
S 18°37′34″ E., 373.38 ft.;
S 60°29′42″ W., 302.93 ft.;
S 41°02′32″ W., 313.36 ft.;
S 54°32′06″ W., 359.45 ft.;
S 68°34′28″ W., 456.99 ft.;
S 11°35′07″ W., 211.31 ft.;
S 13°41′48″ E., 377.90 ft.;
S 08°03′06″ W., 314.83 ft.;
S 54°30′46″ W., 359.10 ft.;
N 77°39′24″ W., 542.47 ft.;
S 80°01′31″ W., 417.66 ft.;
S 38°03′01″ W., 262.61 ft.;
S 78°02′02″ W., 285.49 ft.;
S 66°14′09″ W., 368.79 ft.;
S 08°03′06″ W., 314.83 ft.;
S 19°21′03″ W., 612.92 ft.;
N 44°56′06″ W., 291.74 ft.;
S 48°25′32″ W., 313.28 ft.;
N 32°45′55″ W., 299.89 ft.;
S 81°19′19″ W., 401.37 ft.; from which the true point of beginning bears N 06°39′56″ W., 50,181.07 feet distant.

The areas described aggregate 309 acres in Lincoln County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13577 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–66–M

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43 CFR Public Land Order 7060

[NV–930–4210–06; N–56170]

Withdrawal of Public Land for Recreation Area; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 464.93 acres of public land from surface entry

and mining for a period of 20 yeras for the Bureau of Land Management to protect the Sacramento Pass Recreation Area in White Pine County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Sacramento Pass Recreation Area:

Mount Diablo Meridian

T. 14 N., R. 68 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1 and 2.
T. 15 N., R. 68 E.,
Sec. 35, SE¼;
Sec. 36, W½SW¼ and SE¼SW¼.

The area described contains 464.93 acres in White Pine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursaunt to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13576 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–HC–M

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43 CFR Public Land Order 7062

[CO–932–4210–06; COC 021250]

Partial Revocation of Public Land Order No. 1800; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 1800 insofar as it affects 12.07 acres of National Forest System land withdrawn for protection of a campground. The land is no longer needed for this purpose and the revocation is needed to permit disposal of the land by the Forest Service. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1800, which withdrew National Forest System land for use as a campground, is hereby revoked insofar as it affects the following described National Forest System land:

Sixth Principal Meridian

Arapaho National Forest

T. 2 S., R. 75 W.,
Sec. 10, Suspended, Metes and Bounds description:

Beginning at corner No. 2, HES 117; Thence S. 3° E., 24.53 chains to corner No. 3, HES 117; N. 73° E., 10.00 chains; Northwesterly with the centerline of Highway U.S. 40, 24.84 chains to the point of beginning.

The area described contains 12.07 acres of National Forest System land in Grand County.

2. At 9:00 a.m. on June 20, 1994, the land described in paragraph 1 will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13498 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

RIN 2115–AE54

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations covering applicants for merchant mariner's documents to eliminate the requirement that the applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel. Because of new requirements pertaining to applicants of merchant mariner's documents, the requirement for proof of a commitment of employment is no longer necessary. This action will relieve applicants and employers of an unnecessary regulatory burden.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division, at (202) 267–0238.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mrs. Justine Bunnell, Project Manager, Office of Marine Safety, Security and Environment Protection, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 6, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Proof of Commitment to Employ Aboard U.S. Merchant Vessels" in the **Federal Register** (58 FR 64278). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Section 12.25–5 of title 46 of the Code of Federal Regulations requires an applicant for an original merchant mariner's document (MMD) endorsed for service in ratings for which no professional examination is required to produce satisfactory proof of a commitment of employment (letter of commitment) as a member of the crew of a United States merchant vessel. This requirement was established in 1937 as a means to ensure that those persons obtaining MMDs were actually to be employed as merchant mariners. Because no fee or renewal requirements had been associated with application for an MMD, many applying for an MMD were doing so to obtain a desirable form of identification, and had no intention of seeking employment as a merchant mariner.

On March 19, 1993, the Coast Guard published a final rule establishing user fees for services relating to marine licensing, certification of registry, and merchant mariner documentation (58 FR 15228). That rule established an issuance fee of $35 for an MMD with an additional $17 charge for an FBI criminal record check if the application is for an original MMD. As noted in the preamble of the user fee final rule, as a result of the user fee and other expenses, individuals with no intention of returning to sea may choose not to renew a license. Likewise, the user fee will deter individuals with no intention of obtaining employment as a member of the crew of a United States merchant vessel from applying for an MMD. For this reason, the Coast Guard now considers the requirement for a letter of commitment unnecessary, and the requirement is removed by this rulemaking. This final rule also makes conforming changes to 46 CFR part 16 to remove references to "commitment of employment."

Discussion of Comments and Changes

Four comments were received during the comment period. All of the comments supported the rulemaking as proposed. Therefore, no changes have been included in this final rule.

Regulatory Assessment

This final rule is not a significant regulatory action under Executive Order 12866 and, has not been reviewed by the Office of Management and Budget. It is also not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Assessment is unnecessary. This final rule will relieve applicants of the burden of obtaining a letter from a new employer evidencing the employer's commitment to hire the applicant. Employers will be relieved of the burden of supplying such letters. While the cost of obtaining and supplying such letters is considered minimal, this action will relieve industry and applicants of an unnecessary regulatory requirement.

Small Entities

This final rule will eliminate the requirement that an applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel. The amendments will have minimal economic impact on the maritime industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule 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 final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to establish regulations pertaining to the issuance of merchant mariner's documents has been committed to the Secretary of Transportation by Federal statute and delegated to the Coast Guard. Documentation of merchant mariners is a matter national in application for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends to preempt State action addressing the same matter, although no such action is expected.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. The amendment involves only elimination of the requirement that an applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel prior to receiving an MMD and clearly would have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 12 and 16 as follows:

PART 12—CERTIFICATION OF SEAMEN

1. The authority citation for part 12 is revised to read as follows:

Authority: 46 U.S.C. 2103, 7301, 7701, 10104; 49 CFR 1.46.

§ 12.25–5 [Removed]

2. Section 12.25–5 is removed.

PART 16—CHEMICAL TESTING

3. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

§ 16.105 [Amended]

4. In § 16.105, the definition of *Commitment of employment* is removed.

5. In § 16.210, paragraph (a) is revised to read as follows:

§ 16.210 Pre-employment testing requirements.

(a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.

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Dated: March 24, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930363-4145, I.D. 012793B]

Designated Critical Habitat; Northern Right Whale

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

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for the northern right whale (*Eubalaena glacialis*). The designated habitat includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. This designation provides notice to Federal agencies and the public that a listed species is dependent on these areas and features for its continued existence and that any Federal action that may affect these areas or features is subject to the consultation requirements of section 7 of the Endangered Species Act (ESA).

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Requests for copies of this rule should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Protected Species Management Division, NMFS, 301/713-2322; Charles Oravetz, Southeast Regional Office, NMFS, 813/893-3141; or Doug Beach, Northeast Regional Office, NMFS, 508/281-9254.

SUPPLEMENTARY INFORMATION:

Background

Right whales, *Eubalaena* spp., are the most endangered of the large whale species, brought to extremely low levels by commercial whaling. Right whales were the earliest targets of whaling and, although they have been protected world-wide from commercial whaling by international agreements since 1935, right whale populations still remain extremely depleted. The global population of right whales is comprised of two separate species, one each in both the northern and southern hemisphere, and several stocks or populations within each hemisphere. The majority of right whales occur in the southern hemisphere (the southern right whale, *E. australis*) and are considered a separate species from the right whale in the northern hemisphere (*E. glacialis*).

At least two populations of northern right whales, an eastern and a western population, occur, or have occurred, in the North Atlantic. The eastern North Atlantic population may be nearly extinct. Between 1935-1985, there were only 21 possible sightings in the eastern North Atlantic, totaling 45 individuals (Brown, 1986). Furthermore, Brown (1986) considered only five of these sightings (seven individual whales) to be confirmed. In the western North Atlantic, the known distribution and abundance of right whales indicate a "best available" population estimate of 300-350 individuals. Despite the low abundance and known anthropogenic factors affecting total mortality (Kraus, 1990), the western North Atlantic stock is the largest in the Northern Hemisphere. This population stands to benefit most from recovery actions (NMFS, 1991; Kenney, Winn and Macaulay, 1994).

Like other baleen whales, the western North Atlantic population of right whales (hereafter referred to as the northern right whale) is migratory. The known distribution and migratory pattern has been previously summarized by Kraus (1985); Winn, Price and Sorensen (1986); Gaskin (1987, 1991); and by Kraus et al. (1986). The five primary habitats used by northern right whales during their annual migration, as described by Kenney, Winn and Macaulay (1994), include the following three areas off the eastern coast of the United States: (1) A spring/early summer feeding and nursery area for a majority of the population in the Great South Channel (GSC), (2) a late winter/spring feeding and nursery area for a small portion of the population in Cape Cod Bay (CCB), and (3) a winter calving ground and nursery area in the coastal waters of the southeastern United States (SEUS); and the following two areas located in Canadian waters: (4) a summer/fall feeding and nursery area for some animals, including nearly all mother/calf pairs, in the lower Bay of Fundy; and (5) a summer/fall feeding ground, with almost exclusively mature individuals, on the southern Nova Scotian shelf.

The northern right whale was listed as endangered on June 2, 1970 (35 FR 8495). Section 9 of the ESA prohibits the taking of endangered species, and section 7 requires Federal agencies to ensure that their actions are not likely to jeopardize either threatened and endangered species. For species listed prior to 1978, when Congress required that critical habitat be designated, concurrently with the listing, critical habitat may be designated although such designation is not required. Section 4(f) of the ESA also requires the responsible agency to develop and implement a recovery plan for listed species, unless such a plan would not promote the conservation and recovery of the species. NMFS determined that a recovery plan would promote the conservation of the northern right whale. Accordingly, the Assistant Administrator for Fisheries (AA) appointed a Recovery Team consisting of experts on right whales from the private sector, academia and government. A Recovery Plan for the Northern Right Whale was approved by NMFS in December, 1991 (NMFS, 1991).

NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for the northern right whale on May 18, 1990. A **Federal Register** notice was published on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. Of those agencies, organizations, and private groups that commented, most responded favorably to the designation of the three areas in the U.S. as critical habitat for the northern right whale. The comments received were considered and incorporated as appropriate by NMFS in the proposed rule to designate critical habitat for northern right whales. The proposed rule was published on May 19, 1993 (58 FR 29186), and provided for a 60-day comment period. NMFS also completed an Environmental Assesment (EA) pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The EA resulted in a finding of no significant impact for the proposed action.

During the comment period, NMFS received several requests for public hearings on the proposed designation. Public hearings were held in Boston, MA, on August 25, 1993; in Port Canaveral, FL, on August 24, 1993; and in Brunswick, GA, on August 25, 1993 (58 FR 41454, Aug. 4, 1993). The comment period was extended until August 31, 1993, to allow commenters the opportunity to respond to concerns voiced at the public hearings. After consideration of public comments, and based on the best available scientific information, NMFS is designating critical habitat for the northern right whale as described in the proposed rule.

Definition of Critical Habitat

"Critical habitat", as defined in section 3(5)(A) of the ESA, and the term "conservation", as defined in section 3(3) of the ESA, were provided in the preamble to the proposed rule (58 FR 29186, May 19, 1993).

Essential Habitat of the Northern Right Whale

Biological information for the northern right whale can be found in the Recovery Plan (NMFS, 1991), and in recent scientific literature (Winn, Price and Sorensen, 1986; Kenney et al., 1986; Wishner et al., 1988; Mayo and Marx, 1990; Payne et al., 1990; Kraus and Kenney, 1991; Kraus et al., 1993; Kenney, Winn and Macauley, 1994). The physical and biological habitat features of the critical habitat are discussed herein.

Foraging Habitat of the Northern Right Whale

Right whales have been characterized principally as "skim" feeders (Kawamura, 1974; Nemoto and Kawamura, 1977). They subsist primarily on dense swarms of calanoid copepods, notably *Calanus finmarchicus* in the North Atlantic (Mitchell, 1975; Watkins and Schevill, 1979; Winn, Price and Sorensen, 1986; Wishner et al., 1988; Mayo and Marx, 1990; Kraus and Kenney, 1991). Northern right whales are also known to prey on other similar sized zooplankton. Two other zooplankton species preyed upon by northern right whales in CCB include *Pseudocalanus minutis* and *Centropages* spp. (Mayo and Marx, 1990). A strong positive correlation between the abundance of right whales in the southern Gulf of Maine and densities of *C. finmarchicus* has been described by Kenney et al. (1986), Wishner et al. (1988), Payne et al. (1990), and Kenney, Winn and Macauley (1994). The two recorded time intervals when right whales were most abundant in the CCB/Stellwagen Bank area (April 1970, reported by Watkins and Schevill, 1982; and during 1986, reported by Payne et al., 1990) were during periods of observed peak densities of copepods.

While the size and density of copepod patches are important to the feeding energetics of right whales, so are the relative proportions of adult copepods within each patch (Kenney et al., 1986; Wishner et al., 1988). Although the feeding ecology of right whales is likely more complex than previously thought (Mayo and Marx, 1990), dense aggregations of older, caloric-rich copepods seem to be the required characteristics for energetically successful foraging by right whales. If copepods in these caloric-rich, adult developmental stages are not available to northern right whales in sufficient densities, there may be insufficient prey available in the remaining developmental stages (independent of abundance) to provide right whales with the required energy densities (as described by Kenney et al., 1986) to meet the metabolic and reproductive demands of the right whale population in the western North Atlantic (Kenney et al., 1986; Payne et al., 1990).

Foraging Habitat: The overall spatial requirements for right whales are not well defined; however, the distribution pattern observed for northern right whales indicates that four of the five principal habitats occupied by right whales in the western North Atlantic are used for foraging, and possibly reproductive activities: The GSC, CCB, the Bay of Fundy, and the Scotian Shelf. Neither feeding nor courtship behavior has been observed along the SEUS. Scientists believe that subadult and adult baleen whales fast, or feed rarely, during the winter calving period.

Based on observed distribution patterns compared to oceanographic conditions, scientists speculate that the topographic and seasonal oceanographic characteristics of foraging areas are conducive to the dense growth of zooplankton. These high-use areas may comprise the minimal space required for normal foraging behavior that will support the northern right whale population. The Department of Fisheries and Oceans (Canada) has already designated two foraging areas as right whale sanctuaries—one in the Bay of Fundy and another on the Scotian Shelf. The remaining two foraging habitats, the GSC and CCB, are found in the United States and are included as critical habitat for the northern right whale.

Great South Channel: The GSC is a large funnel-shaped bathymetric feature at the southern extreme of the Gulf of Maine between Georges Bank and Cape Cod, MA. The GSC is one of the most used cetacean habitats off the northeastern United States (Kenney and Winn, 1986). The channel is bordered on the west by Cape Cod and Nantucket Shoals, and on the east by Georges Bank. The channel is generally deeper to the north and shallower to the south, where it narrows and rises to the continental shelf edge. To the north, the channel opens into several deepwater basins of the Gulf of Maine. The V-shaped 100-m isobath effectively delineates the steep drop-off from Nantucket Shoals and Georges Bank to the deeper basins. The average depth is about 175 m, with a maximum depth of about 200 m to the north.

The GSC becomes thermally stratified during the spring and summer months. Surface waters typically range from 3 to 17°C between winter and summer. Salinity is stable throughout the year at approximately 32–33 parts per thousand (Hopkins and Garfield, 1979). Much of the bottom is comprised of silty, sandy sediments, with finer sediments occurring in the deeper waters.

The late-winter/early spring mixing of warmer shelf waters with the cold Gulf of Maine water funneled through the channel causes a dramatic increase in faunal productivity in the area. The zooplankton fauna found in these waters are typically dominated by copepods, specifically *C. finmarchicus, P. minutus, C. typicus, C. hamatus,* and *Metridia lucens.* From the middle of winter to early summer, *C. finmarchicus* and *P. minutus* are the dominant species, which together made up between 60 and 90 percent of the samples described by Sherman et al. (1987). In late spring, *C. finmarchicus* alone makes up 60 to 70 percent of the copepod community. In the second half of the year, both species of *Centropages* dominate the waters, accounting for about 75 percent of all copepod species sampled.

The GSC right whale distribution was described by Kenney, Winn and Macaulay (1994), and the following, unless otherwise cited, is taken from that manuscript. Right whales occur in the GSC on a strictly seasonal basis—in the spring, with a peak in May. Only in 1986 and 1987 were a small number of right whales present throughout most or all of the summer. This corresponds to the atypical copepod density maxima in the GSC and southern Gulf of Maine described by Wishner et al. (1988) and Payne et al. (1990). The main area of GSC right whale distribution has been in the central basin, generally in waters deeper than 100 m. There is a persistent thermal front, which roughly parallels the V-shaped 100-m isobath typically slightly south of that isobath in 60–70 m of water. The front divides stratified waters with warmer surface temperatures to the north of the front from tidally mixed water with cooler surface temperatures over the shallower area south of the front (Wishner et al., 1988; Brown and Winn, 1989). Right whales occur in the stratified waters north of the front, and Brown and Winn (1989) showed that right whale sightings were non-randomly distributed relative to the front, but were at a median distance from it of about 11 km. Although there are variations between years, the "typical" pattern is for the

primary right whale aggregation to occur in the central to western portion of the basin. Within any one year, the general area of major aggregation is remarkably stable. A gradual southward shift in the center of distribution occurs as the season progresses.

Single-day abundance estimates for the GSC, uncorrected for animals missed while submerged, ranged up to 179 individuals (Kenney, Winn and Macauley, 1994). The total number of photographically identified northern right whales is now 319, eliminating those known to have died, but including some that have not been sighted for several years and that may be dead (Kraus et al., 1993). Therefore, it is likely that a significant proportion of the western North Atlantic right whale population uses the GSC as a feeding area each spring, aggregating to exploit exceptionally dense copepod patches. Given that not all of the 300–350 right whales are seen in U.S. shelf waters each season, it is very likely that most, if not all, of the northern right whale population use the GSC within any given season, and that every 2–3 years, the entire population of 300–350 northern right whales in the northwest Atlantic may pass through the GSC.

Cape Cod Bay: The CCB is a large embayment on the U.S. Atlantic Ocean off of the State of Massachusetts that is bounded on three sides by Cape Cod and the Massachusetts coastline from Plymouth, MA, south. To the north, CCB opens to Massachusetts Bay and the Gulf of Maine. CCB has an average depth of about 25 m, and a maximum depth of about 65 m. The deepest area of CCB is in the northern section, bordering Massachusetts Bay.

The general water flow is counter-clockwise, running from the Gulf of Maine south into the western half of CCB, over to eastern CCB, and back into the Gulf of Maine through the channel between the north end of Cape Cod (Race Point) and the southeast end of Stellwagen Bank, a submarine bank that lies just north of Cape Cod. Flow within the bay is driven by density gradients caused by freshwater river run-off from the Gulf of Maine (Franks and Anderson, 1992a, 1992b; Geyer et al., 1992) and by a predominantly westerly wind.

Thermal stratification occurs in the bay during the summer months. Surface water temperatures typically range from 0 to 19°C throughout the year. Salinity is fairly stable at around 31–32 parts per thousand. Much of the bottom is comprised of unconsolidated sediments, with finer sediments occurring in the deeper waters (Davis, 1984). In shallow areas, or where there is sufficient current, sediments tend to be coarser.

Northern right whales were "rediscovered" in the CCB in the early 1950s. Right whales have been seen in Massachusetts waters in most months (Watkins and Schevill, 1982; Schevill, Watkins and Moore, 1986; Winn, Price and Sorensen, 1986; Hamilton and Mayo, 1990). However, most sightings occurred between February and May, with peak abundance in late March (Mayo, 1993). Schevill, Watkins and Moore (1986) reported 764 sightings of right whales between 1955 and 1981 in CCB. More than 70 whales were seen in one day in 1970. Hamilton and Mayo (1990) reported 2,643 sightings of 113 individual right whales in Massachusetts waters, with a concentration in the eastern part of CCB. A number of right whales, including cow-calf pairs, remained in CCB and Massachusetts Bay during the summers of 1986 and 1987. This was attributed to atypically dense concentrations of *C. finmarchicus* in those years, and low abundances of sandlance, *Ammodytes* spp., a planktivorous finfish that also preys on copepods and may be competing with right whales for copepod prey during recent years (Payne et al., 1990).

The late-winter/early spring zooplankton fauna of CCB consists primarily of copepods, represented predominantly by two species, *Arcartia clausi* and *A. tonsa*. Samples taken in the daytime indicated greater densities of copepods at greater depths. The copepod *C. finmarchicus* is found throughout inshore CCB waters at densities of 100 individuals per cubic meter from April through June (Mayo and Marx, 1990). However, Mayo and Marx (1990) found that the density of surface zooplankton samples collected in the path of feeding right whales during mid-winter was significantly higher than for the samples taken where whales were absent (median = 3,904 organisms/m^3). The threshhold value below which feeding by northern right whales is not likely to occur in CCB is approximately 1,000 organisms/m^3 (Mayo and Marx, 1990). Although year-to-year variation in the composition of zooplankton was found, feeding right whales were associated with patches of zooplankton that were dominated by *C. finmarchicus, P. minutus, C.* spp. and by cirripede (barnacle) larvae. These authors suggested that, after arrival in CCB when prey is at a maximum (or at least at a consistently acceptable level), the whales select the densest patches of copepods (Mayo and Marx, 1990).

Calving and Nursery Habitat of Northern Right Whales

Cape Cod Bay: Schevill, Watkins and Moore (1986) reported 21 sightings of small calves in 12 of the 26 years of their CCB study, including two calves that may have been born in CCB. Therefore, the CCB may occasionally serve as a calving area, but it is more recognized for being a nursery habitat for calves that enter into the area after being born most likely in, or near, the SEUS. Mead (1986) identified Massachusetts waters as second only to the SEUS for documented right whale calf sightings. Hamilton and Mayo (1990) observed a total of 30 calves between 1979 and 1987, associated with 21 mothers. Schevill, Watkins and Moore (1986) and Hamilton and Mayo (1990) documented observations of mating behavior and nursing in CCB.

Southeast United States (SEUS): The coastal waters off Georgia and northern Florida (the area described as the SEUS) average about 30 m in depth with a maximum depth of about 60 m. The deepest waters occur along the coast of Florida, just south of Cape Canaveral. Seasonal water temperatures and salinity for this area are higher than in northern waters. This is a transition area separating subtropical from the more temperate southeastern marine communities. Large, cyclic changes in abundance and dominance of plankton species occur seasonally and annually. Annual variation may be so great that short-term monitoring studies may not be sensitive enough to assess the temporal variability of the plankton community. The recorded preferred food of the northern right whale, C. finmarchicus, does not occur in these waters, and the area is not considered a foraging area for northern right whales.

Between 1989–1992, 31 calves were observed within the SEUS, representing 76 percent of the total number of calves (n = 41) reported from the North Atlantic during that period (Kraus et al., 1993). The calving season extends from late November through early March with an observed peak in January. The 30′ blocks of latitude within the SEUS having the greatest density of adult and juvenile right whales occurred in waters from Brunswick, GA to Jacksonville Beach, FL (Kraus et al., 1993). The presence of females with calves was primarily limited to the coastal waters between 27°30′ and 32°00′N latitudes. This is consistent with distributions reported by Kraus and Kenney (1991) using historical sighting data through 1989.

Since 1980, 153 northern right whales have been individually identified from

surveys conducted in SEUS waters. This represents 48 percent of the known northern right whale population of 319 whales. During this period, 125 of the right whales observed in the SEUS have also been sexed using criteria described in Kraus et al. (1993). Of the 96 adults observed, 91 were females, one was a male, and the sex of the remaining four was not determined. These 91 females represent 74 percent of all the photo-identified females who have been reproductively active since 1980. The observed frequency of occurrence of females in the SEUS is significantly greater than the expected 1:1 sex ratio characteristic of the overall population. This demonstrates that the population is segregated by sex at this time of the year, and that the SEUS is used predominantly by females, and females with calves, although several juvenile males have also been observed in recent years. Based on the number of calves and females with calves in the SEUS since 1980, Kraus et al. (1993) consider the SEUS as the primary calving area for the population.

Environmental Correlates to Right Whale Distribution in the SEUS: Environmental features that have been correlated with the distribution of northern right whales throughout the SEUS include water depth, water temperature, and the distribution of right whale cow/calf pairs and the distance from shore to the 40-m isobath (Kraus et al., 1993).

The average water depth at sighting was 12.6 m (SD = 7.1). This shallow water preference is consistent with that recorded for southern right whales with calves (Payne, 1986). Also, the significant correlation between the distribution of northern right whales and the distance from shore of the 40-m isobath (referred to as the inner (0–20-m) and middle (20–40-m) shelf by Atkinson and Menzel, 1985) indicates that right whales in the SEUS are using the nearshore edge of the widest part of the broad shallow-water shelf characteristic of the Georgia-Florida Bight. The inner shelf is dominated by tidal currents, river inflow, and interaction with the coastal sounds. The middle shelf, which is dominated by winds, has less interaction with the coastal environment but is influenced on the outer margins by the Gulf Stream (Atkinson and Menzel, 1985). This use of the inner and nearshore-middle shelf area by right whales may provide maximum protection from the wave action that occurs over the outer margins of the shelf. Therefore, the occurrence of cow/calf pairs in coastal waters of the SEUS may be due, at least in part, to the bathymetry that affords protection from large waves and rough water. The strong winds and offshore wave activity in the winter SEUS is minimized nearshore by the relatively shallow, very long underwater shelf (extending almost 105 km offshore) (Kraus et al, 1993).

The average temperature of 30′ blocks of latitude where right whales have occurred is significantly cooler than those blocks of latitude within the SEUS where right whales were not observed (14.5°C vs. 18.5°C) (Kraus et al., 1993). The inner shelf is not affected by the Gulf Stream during the period when right whales are present; therefore sea-surface temperature decreases as one moves from the Gulf Stream towards shore. It is difficult to separate the effects of temperature from depth and proximity to shore, but sighting data indicate that northern right whales clearly prefer a band of relatively cool water (10–13°C) within the SEUS. This band is affected by the nearshore processes, including cooler freshwater runoff and discharge, as described in several chapters of Atkinson, Menzel and Bush (1985). Although little information is available on right whale physiology, it is hypothesized that the metabolic rate of the whale is affected by water temperature (Kraus and Kenney, 1991). The cooler, coastal water may provide right whales with the optimum thermal balance for calving by cooling the female at a time when offshore, Gulf stream affected warmer waters may be too warm for a female with maximum fatty layers prior to parturition and nursing. At the same time, the coastal waters may be warm enough not to cause problems for a neonate, considering that the insulating layer of a neonate for the first few weeks is minimal, as compared to the adult.

Courtship activities have been observed throughout most of the range of the northern right whale, except within the SEUS (Kraus, 1985).

Activities That May Affect Essential Habitat

Northern right whales are no longer observed in certain areas where they once were found, such as Delaware Bay, New York Bight and Long Island Sound (NMFS, 1991). The absence of right whale sightings in these areas may be due to several factors, including: Increased human activities, habitat degradation, insufficient quantities of prey due to habitat or natural alterations in the physical environment, extinction of an independent breeding group that used these areas or contraction of the species' range as the population has decreased (NMFS, 1991).

There exists a wide range of human activities that may impact the designated critical habitat for northern right whales (NMFS, 1991, 1992). Resource uses in the critical habitat areas are currently, and have been historically, dominated by vessel traffic and fisheries. Vessel activities can change whale behavior, disrupt feeding practices, disturb courtship rituals, disperse up food sources and injure or kill whales through collisions. Thirty-two percent of the known strandings of northern right whales since 1970 have been caused by human activities (Kraus, 1990; NMFS, 1992).

Vessels that operate in the areas being designated as critical habitat include recreational and commercial fishing vessels, commercial transport vessels, passenger vessels, recreational boats, whale-watching boats, research vessels and military vessels (e.g., surface ships and submarines). Helicopters and low-altitude aircraft also fly over the critical habitat. Results of human activities that occur within or near the designated critical habitat for northern right whales, and that may disrupt the essential life functions that occur there, include, but are not limited to:

1. Mortality due to collisions with large vessels: Seven percent of northern right whales identified have propeller scars from a large vessel (NMFS, 1992);

2. Entanglement and mortality due to commercial fishing activities: More than one-half of all cataloged animals have scars indicative of entanglements with fishing gear, resulting in scars, injuries, and death. Fishing nets and associated ropes may become entangled around a flipper, at the gape of the mouth, or around the tail (Kraus, 1985, 1990). Gill nets are believed to be the primary cause of scars and injuries related to fishing gear, although whales have also become entangled in drift nets and lines from lobster pots, seines and fish weirs (Kraus, 1985). Fishing practices and locations may need to be managed more closely when the fishing season overlaps with the presence of right whales.

3. Possible habitat degradation through pollution, sea bed mining, and oil and gas exploration: Exploration and development for oil, gas, phosphates, sand, gravel, and other materials on the outer continental shelf may impact northern right whale habitat through the discharge of pollutants (such as oil, drilling muds and suspended solids); noise from seismic testing, drilling and support activity; and disturbance of the environment through vessel traffic and mining rig activity. If these types of activities are proposed, their timing and location may also require special

management considerations, including the establishment and maintenance of buffer zones.

4. Pollutants may also affect phytoplankton and zooplankton populations in a way that decreases the density and abundance of specific zooplankton patches on which northern right whales feed. In addition, pollution may affect the feeding patterns and habitat use of other components of the marine ecosystem, which in turn could impact food and habitat availability for the northern right whale. Pollutants may also have direct toxic effects on the whale. Monitoring of known and potential pollution and discharge sources in this essential habitat may be necessary to insure that these sources are not affecting prey species abundance or composition, or the northern right whale's ability to gain maximum benefit from use of the area.

Turbulence associated with vessel traffic may also indirectly affect northern right whales by breaking up the dense surface zooplankton patches in certain whale feeding areas. Special vessel traffic management or restrictions may be necessary in certain areas when northern right whales are present.

5. Possible harassment due to whale-watching and other vessel activities; and

6. Possible harassment due to research activities (on permitted sites and during specified times throughout the year).

The effect of any of these activities on individual whales or on their habitat could have consequences that may impede the recovery of the northern right whale population. Therefore, special management considerations may be required to protect these areas and promote the recovery of the northern right whale. The following are some, but not necessarily all, of those activities that occur in each of the designated critical habitat areas.

Cape Cod Bay: In CCB, vessel traffic associated with the Cape Cod Canal, the Boston Harbor traffic lanes, dredging and disposal traffic, recreational boating, commercial fishing and whale-watching activities comprise the majority of the vessel activity in the immediate area. Of these, recreational boating, commercial fishing and whale-watching contribute greatly to the level of activity in the critical habitat.

Recreational boating begins with the onset of warmer months, particularly in June. Commercial fishing vessels and gear are dominated by the lobster industry, which does not typically begin its season until the middle of June. Whale-watching boats, ferries and other vessels increase activity in the area with the onset of warmer weather and the tourist season, which typically begins in May or June and ends no later than November.

Discharges from municipal, industrial and non-point sources, dredging activities, dredge spoil disposal and sewage disposal may degrade essential habitat in Massachusetts Bay/northern CCB. The cumulative effects to baleen whales (including right whales) by these activities may affect the northern right whale in Massachusetts Bay/northern CCB.

Great South Channel: In the GSC, vessel traffic and fisheries constitute the majority of activities within the critical habitat area. However, in this area, these activities are not contingent on warm weather. Shipping vessel traffic lanes for Boston Harbor are used throughout the year to import and export metal, salt, fuel and a variety of other products. Similarly, the commercially important fishing grounds on Georges Bank involve year-round vessel traffic from the mainland through right whale essential habitat to the fishing grounds. The bottom-trawl is the most dominant type of fishing gear used in this area. It is not known whether the bottom-trawl, or any other type of fishing gear, has an impact on the whales' habitat. Mesh sizes used in this area do not pose an immediate threat to the whales' planktonic food supply.

Southeast United States: Vessel traffic and fisheries are the major activities in the SEUS calving grounds. Major commercial shipping and military ports operate throughout the winter/calving area. The majority of commercial fishing vessels that use the inshore waters to harvest shrimp and other commercially important species use these and other neighboring ports as well. Recreational boating traffic is also fairly extensive.

Expected Impacts of Designating Critical Habitat

A critical habitat designation directly affects only those actions authorized, funded, or carried out by Federal agencies. Federal agencies that may be affected by critical habitat designation of these areas include, but are not necessarily limited to, the U.S. Coast Guard, Environmental Protection Agency, U.S. Army Corps of Engineers, NMFS (including the New England Fishery Management Council (NEFMC) and South Atlantic Fishery Management Council), National Ocean Service, Office of Coastal Zone Management, Minerals Management Service and the U.S. Navy. For a discussion of the expected impacts and significance of critical habitat designation, see "Significance of Designating Critical Habitat" in the proposed rule (58 FR 29187, May 19, 1993).

Consideration of Economic and Other Factors

NMFS prepared an EA on its proposed designation of critical habitat, based on the best available information, that described the environmental and economic impacts of alternative critical habitat designations. The economic impacts considered in this analysis were only those incremental economic impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to the listing of the species, or resulting from authorities other than the ESA. Listing a species under the ESA provides significant protection to the species' habitat through the no-jeopardy standard of section 7 and, to a lesser extent, the prohibition against taking of section 9, both of which requires an analysis of harm to the species that can include impacts to habitat of the species. Therefore, the additional direct economic and other impacts resulting from the critical habitat designation are minimal. In general, the designation of critical habitat reinforces the substantive protection resulting from the listing itself.

Designation of critical habitat in these areas may result in an increase in administrative time and cost to Federal agencies that conduct, authorize or fund projects in the designated areas. However, these agencies are currently required to address habitat alteration issues in section 7 consultations, and as a result, any increase in administrative time or cost is expected to be minimal.

Designated Critical Habitat; Essential Features

NMFS, by this final rule, designates areas essential for the reproduction, rest and refuge, health, continued survival, conservation and recovery of the northern right whale population. The following areas are designated as critical habitat:

Great South Channel: The area designated as critical habitat in these waters is bounded by the following coordinates: 41°40′N/69°45′W; 41°00′N/69°05′W; 41°38′N/68°13′W; 42°10′N/68°31′W.

Cape Cod Bay: The area designated as critical habitat in these waters is bounded by the following coordinates: 42°04.8′N/70°10.0′W; 42°12′N/70°15′W; 42°12′N/70°30′W; 41°46.8′N/70°30′W; and on the south and east, by the interior shoreline of Cape Cod, MA.

Southeastern United States: The area designated as critical habitat in these waters encompasses waters between 31°15′N (approximately located at the mouth of the Altamaha River, GA) and

30°15'N (approximately Jacksonville, FL) from the shoreline out to 15 nautical miles offshore; and the waters between 30°15'N and 28°00'N (approximately Sebastian Inlet, FL) from the shoreline out to 5 nautical miles.

Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

References

Most references used in this final designation can be found in the Final Recovery Plan for Right Whales (NMFS, 1991), and in the EA. Additional references found in the preamble to this rule are available upon request (see ADDRESSES).

Comments and Responses

NMFS solicited information, comments and recommendations from concerned government agencies, the scientific community, industry and the general public (58 FR 29186, May 19, 1993). NMFS considered and incorporated, as appropriate, all comments received during the comment period (ending on August 31, 1993) and all comments received during public hearings on the proposed rule prior to making this final designation.

During the comment period and at the public hearings, NMFS received a total of 35 sets of comments from regional and national environmental organizations; county, state and Federal agencies; and associations representing regional commercial and sport fisheries. NMFS also received more than 50 written and oral presentations (at public hearings) regarding the proposed designation of critical habitat for northern right whales.

Comments received by NMFS generally fell into one of the following categories: (1) Those who were in favor of the designation as it was proposed; (2) those who were in favor of the proposed designation, but recommended that additional regulatory actions be taken at the time of designation to protect northern right whales; (3) those who were in favor of designating critical habitat for northern right whales, but recommended expanding the boundaries of the critical habitat; (4) those who were not in favor of the designation because it was not necessary, given the protective measures for right whales that are being implemented through section 7 of the ESA; and (5) those who were not in favor of the critical habitat designation because it may lead to further restrictions on a specified activity.

Most comments received by NMFS from private individuals, environmental organizations, and state agencies supported the critical habitat designation for northern right whales. Several commenters suggested that the proposed rule lacked clear conservation measures to ensure the recovery of the northern right whale. Many of the recommendations were duplicative of those of other commenters; therefore, individual comments were combined and addressed together below, unless otherwise specified.

Comment 1: One commenter recommended that NMFS designate a Northern Right Whale Recovery Plan Implementation Team for the coastal calving grounds off Florida and Georgia. The commenter further suggested representative agencies and organizations that might participate on this team.

Response: On August 26, 1993, NMFS convened a meeting to discuss the monitoring program that needed to be in place to protect northern right whales on their winter ground, prior to their winter arrival. During this meeting, the Southeastern U.S. Right Whale Recovery Plan Implementation Team was formed. The team consists of representatives from the Georgia Department of Natural Resources (Chairman); Florida Department of Environmental Protection; NMFS/Southeast Fisheries Center and Southeast Regional Office; U.S. Navy, Naval Air Station, Jacksonville, FL; U.S. Navy, Submarine Group, Kings Bay, GA; Georgia Ports Authority; Canaveral Port Authority; Glynn County Commission, Glynn County, GA; University of Georgia; U.S. Army Corps of Engineers (ACOE), South Atlantic Division; U.S. Environmental Protection Agency (EPA); Port of Fernandina, Fernandina, FL; and the U.S. Coast Guard.

NMFS is also coordinating the development of a Right Whale Recovery Plan Implementation Team for the Northeastern United States. Recovery Plan implementation for the northern right whale has been ongoing at some level within NMFS, Northeast Region (NER), since December 1990, and has involved agency staff and scientific experts in the area. The most recent Massachusetts Water Resources Authority outfall Biological Opinion (issued September 8, 1993), and associated conservation recommendations, are part of the recommendations and programs that have been instituted in the NER that address Right Whale Recovery Plan tasks. The Northeast Implementation Team will address the possible cumulative impacts to right whales from all activities in Massachusetts Bay.

Comment 2: Several organizations recommended that NMFS implement an early warning system, consisting of daily surveys (from December 1 through March 31) of the known wintering grounds. Several organizations also recommended that monitoring be conducted along the migratory route of this species.

Response: "Early warning systems" for right whales in the southeast United States were first developed through ESA section 7 consultations between NMFS and ACOE, Jacksonville District, as a result of dredging operations at the Navy's submarine channel at Kings Bay, GA; the Port of Fernandina, FL; the Port of Jacksonville, FL; the Naval facilities at Mayport, FL; a navigation channel at St. Augustine, FL; and numerous beach disposal projects using offshore disposal sites throughout this area. Measures to protect right whales have included daily aerial surveys at the time that the dredges are in operation during the calving season. If a right whale is seen within a 16-kilometer (k) radius of dredge and disposal areas, dredges and support vessels are required to carry an observer during daylight hours and to reduce speeds at night to reduce the likelihood of a collision with a whale. However, these precautions were only in place while the dredging operations were being conducted, not throughout the entire winter calving period. Therefore there were gaps in the aerial survey coverage, and thus in protective measures for the whales.

In December 1993, the U.S. Navy and the U.S. Coast Guard provided funding to conduct aerial surveys during the remainder of the time that the whales were in the calving area; the area of concern from the Savannah River south to approximately Jacksonville, FL, was surveyed through March 1994. The ACOE will continue to provide coverage during those periods when hopper dredges are active. Therefore, the whale sightings are passed on to appropriate agencies if a survey finds whales in or near a navigational channel, vessels are asked to proceed at minimum safe operational speeds and communicate locations of the whale so other vessels can avoid them. This procedure will continually be reviewed and revised through efforts of the Southeast Implementation Team. NMFS intends to continue cooperative efforts with the U.S. Navy, U.S. Coast Guard, the ACOE, and the implementation team to conduct daily aerial surveys throughout the calving season and to operate the early warning system to reduce the likelihood of ship strikes.

It is unlikely that right whales can be monitored throughout their range for the

purpose of protecting them from ship strikes. NMFS is developing a research program that may include satellite tracking of tagged northern right whales to determine those areas (winter and summer) where right whales occur, but which are unknown at this time.

Comment 3: The following comments were made by several commenters. They all address additional activities that the commenters felt should be developed to protect right whales, or activities that should be prohibited, restricted or modified, primarily in the SEUS, to protect the whales further. These comments are addressed together.

a. Many commenters indicated that restrictions or modifications of shipping lanes and shipping practices need to be made at the time of designation. The suggested modifications or changes included the seasonal relocation of shipping lanes, a requirement that vessels entering or leaving ports adjacent to the right whale winter grounds use direct routes (perpendicular to the shoreline at the port entrance) from December 1 through March 31, restriction of shipping and vessel speeds to allow whales to avoid oncoming ships or allow ships to avoid hitting whales, and a requirement of dedicated onboard observers to maintain watch so that vessel collisions with right whales are avoided when ships are transiting through right whale wintering habitats during months when the whales occupy these habitats.

b. Several commenters recommended the development of education programs for shipping and public interests. Others suggested that NMFS provide to the shipping companies illustrated instructions (in many languages) on the importance of protecting right whales in these waters, and on safe vessel operation in the winter calving areas. They further suggested that these instructions be posted for the crews of all ships operating in U.S. waters, and that these safety measures should be enforced. It was suggested that the U.S. Coast Guard should include whale safety in its small boating course, and in required courses for commercial captains and boat operators.

c. Several commenters suggested that NMFS should define right whale critical habitat boundaries on NOAA navigational charts, and the notice of the designation and occurrence of whales need to be included seasonally in the Notice to Mariners and other publications, alerting shipping interests to the potential presence of right whales in the area at certain times.

d. Several commenters recommended that NMFS ban dredging and seabed mining in the right whale calving grounds and feeding grounds, and along the entire migratory route. Many comments supported restrictions on dredging, if necessary, to protect right whales; gas and oil exploration and the dumping of contaminated waste within the calving areas described by the critical habitat boundaries; dumping of contaminated dredge spoils and industrial waste; and the construction of submerged or emergent structures within known right whale habitats.

e. Several commenters suggested that the discharge of pollutants at the mouths of rivers that empty into the calving grounds should be monitored for possible effects on the habitat.

Response: Regarding comments 3a.–3c., the Southeastern U.S. Right Whale Recovery Plan Implementation Team (see Comment 1) formed committees to examine many of the issues discussed in the comments. Committees that were formed cover the following topics: Education/Awareness; Early Warning Surveys/Communication; Funding of Surveys; Research; and Relocation of Ocean Disposal Sites. A second meeting of the Implementation Team occurred on December 14, 1993; the following updates from each of the committees are summarized from that meeting.

Education/Awareness Committee: The Canaveral Port Authority developed an endangered species pamphlet covering whales, manatees and turtles, which is being distributed regionally. As a group, the Port Authorities developed a series of posters describing the time right whales are in their waters, a phone number to contact if a whale is seen, and mention of right whale habitat. This poster is being distributed by the harbor pilots when they board a vessel for navigation.

A standard brochure on right whales in the SEUS has been developed with input from the Georgia DNR, Florida DEP, New England Aquarium and others. The brochure is designed for boaters (commercial and public), but is also to be given to ship masters by harbor pilots. The Port Authorities, U.S. Coast Guard, U.S. Navy, Georgia DNR and Florida DEP can use this brochure to increase public awareness and education. Financial support for this brochure comes from the participating agencies.

The Georgia DNR and U.S. Coast Guard developed a local Notice to Mariners about right whale calving grounds. This notice is broadcast four times daily by the U.S. Coast Guard on VHF. Broadcasts ran from December 6, 1993, through March 31, 1994. A slightly longer version is published in the local Weekly Notice to Mariners. This notice may also be published daily, along with the tides and weather, in regional newspapers. The Annual Notice to Mariners also has information on this subject.

Several press releases were issued beginning when the first right whales were sighted on December 4, 1993. A regional press release was also issued describing the implementation team, members, persons to contact if a whale is seen and other information on the need for protection of right whales in the SEUS.

The University of Georgia is surveying local groups to ensure that there is no duplication in the development of educational materials on right whales, and to provide a network to combine and coordinate efforts.

The Savannah Area Chamber of Commerce suggested that treating a sighted right whale as though it were another ship (slowing down, changing course and anchoring to avoid collisions with right whales) should be formalized for all ports in the southeast (i.e., treating right whales as vessels under the nautical rules of the road). They further stated that injury to, and interference with, right whales can best be avoided by continuing the education of ship's captains, and through ongoing cooperation between the port, its pilots and the Georgia DNR.

Early Warning and Communication Committee: An early warning network has been developed with aerial surveys at the core of the network (see Comment 2). A communication flow chart has been developed to illustrate how information regarding whale sightings should be channeled between the appropriate agencies/groups. This is currently considered the best communication scheme for relaying right whale sightings from aircraft to land-based stations, and back to surface vessels. This communication network is essential to the early warning system and alerts mariners to the presence of right whales in the SEUS. Information disseminated by this system is updated daily as whales are located during the aerial surveys.

Regarding Comment 3d., many of the suggested activities may be authorized, funded or conducted by Federal agencies. The responsible Federal agency active within the range of the northern right whales is required to consult with NMFS regarding its projects and activities under section 7 of the ESA. If the activity is found likely to jeopardize the continued existence of the species, directly or through habitat degradation, reasonable and prudent alternatives would be offered that could include restrictions. Even if the activity is not likely to jeopardize the continued

existence of the species, NMFS is required to provide an incidental take statement that identifies the impact of any incidental taking of northern right whales by the action agency, and specifies reasonable and prudent measures, and terms and conditions that must be complied with, to minimize such takings. These measures may include restrictions upon the activity. In addition, private entities are prohibited from taking an endangered species pursuant to section 9 of the ESA, which may include harm to the species caused by habitat degradation. In this regard, such activities are already prohibited as a result of listing.

Regarding Comment 3e., NMFS agrees that discharge of pollutants at the mouths of rivers that empty into the calving grounds should be monitored for possible effects on the habitat. A designation of critical habitat may assist Federal agencies in evaluating the potential environmental impacts of their activities on northern right whales and their critical habitat. The designation may also help focus state and private conservation and management efforts in those areas.

Comment 4: Two commenters recommended that a "distance buffer" be established around northern right whales. One recommended that a minimum approach distance of 100m to 300m should be established for all vessels around right whales.

The second commenter recommended that NMFS establish around every northern right whale, in any area designated as critical habitat, a 500m radius "protection zone," and prohibit any vessel or person from entering or knowingly remaining within this zone. The commenter further suggested that such a buffer zone is consistent with similar rules already adopted by NMFS and cited as examples the minimum distance rule for humpback whales (*Megaptera novaeangliae*) in Hawaii (50 CFR 222.31) and the 5.5 k buffer zone established around Steller sea lion (*Eumetopias jubatus*) rookeries and major haulouts in Alaska (50 CFR 226.12). The commenter continued that such protection zones for the area designated in Cape Cod Bay and Stellwagen Bank would be consistent with existing Massachusetts regulations (322 CMR 12.00 *et seq.*), which require that no one approach or remain within 500m of a right whale in state waters.

Response: In both cases, the purpose of the suggested buffer zones would be to ensure that northern right whales are undisturbed as much as possible throughout their range, and to keep vessels far enough away so that there is no danger of a collision between whales and vessels. Critical habitat designations reflect specific determinate geographical areas containing physical or biological features essential to the conservation of the species. While NMFS recognizes that the area around each whale is important, it is not appropriately the subject of a critical habitat designation. Rather, such buffer zones should be established through separate rulemaking, similar to the special prohibitions for humpback whales in Hawaii.

Comment 5: One commenter suggested that NMFS implement research and monitoring programs focused on: (1) Behavioral changes (of northern right whales) associated with the possible impacts of vessel traffic, noise and whalewatching; or (2) the effects of dredging activities and their associated vessel traffic, siltation and noise in the southeastern United States through continued observation of dredge activity and aerial surveys of right whales in and adjacent to buffer zones around dredging operations; (3) the impact of pollution on phytoplankton and zooplankton abundance—specifically the impact of the Boston Harbor effluent outfall; and (4) the effects of whalewatching activities on the northern right whale. The commenter recommended that, if necessary, NMFS promulgate regulations to mitigate the effects of these activities.

Response: In addition to the monitoring program implemented by the Southeast Implementation Team, NMFS is developing a 3–5 year research plan that will focus on research needs identified as priorities in the Northern Right Whale Recovery Plan. The current research program is the result of several meetings that occurred on April 14–15, 1992, in Silver Spring, MD; June 18, 1993, in Brunswick, GA; and July 16, 1993, in Silver Spring. These meetings established the following research priorities:

a. To determine the wintering location(s) of most northern right whales in the northwest Atlantic through the deployment of satellite tags on selected female right whale;

b. to determine daily movements within the wintering/calving area. Tagging with VHF tags in the SEUS could determine the daily movements of these animals. This information could be useful to develop a long-term monitoring program to reduce ship strikes in the SEUS;

c. to determine the unknown location of a third summering area. There are three matrilineal stocks of northern right whales recognized. One of the stocks does not visit the Bay of Fundy, but is seen in the GSC and CCB during spring, and in the SEUS in winter. Satellite tracking a tagged female from the third matriline (these have already been determined from mtDNA analyses and photoidentification) in the GSC or CCB in the spring might lead to the location of the other summer location of northern right whales in the North Atlantic.

d. to identify "bottlenecks" in the rate of recovery. The reasons for the northern right whale's low reproductive rate relative to southern hemisphere right whales are unknown. One theory is that there is too much inbreeding as a result of the extremely depleted population. The extent of inbreeding can be determined from genetic/molecular identification through mtDNA biopsy sampling and sexing using molecular techniques; and

e. to determine the best location and methods to monitor recovery of this population.

NMFS is not considering broad-based whalewatching regulations at this time, but may consider minimum approach distances specific to northern right whales as part of the recovery planning process (see Response to Comment 3).

Comment 6: One commenter stated that collisions with ships and entanglement in fishing gear may be rare from the perspective of total fishing activity and vessel traffic in the various areas. However, at least two right whales were struck and killed in the past 3 years. That means that about 2 percent (a much higher rate for calves) of the right whales known to occur in the area since late 1989 have been killed by a collision with a vessel. This percentage may underestimate the actual percentage struck during the period because many whales, including calves, have been seen with propeller scars. In the view of the commenter, this information demonstrates a significant risk from the perspective of right whales in this area, especially since the threat is concentrated on the reproductive core of the population and the calves, essential for population recovery.

The commenter recommended that NMFS expand the proposed critical habitat designation to include conservation measures that would reduce the likelihood of right whales being struck by vessels or becoming entangled in fishing gear. The commenter continued that the designation of critical habitat will serve as a warning to those who operate ships in these areas that steps must be taken to reduce the risk of collision with right whales. While finding the steps already taken by harbor pilots, ports authorities, the U.S. Navy, the U.S. Coast Guard,

ACOE and others to be encouraging, the commenter believed that more needs to be done.

Response: NMFS recognizes that the loss of each northern right whale has a measurable impact on this population. The first priority of the Southeast Implementation Team was to develop a program to reduce or eliminate ship strikes throughout the whales' wintering area.

Also, the New England Fishery Management Council (NEFMC) has restricted all commercial fishing in Gulf of Maine Groundfish Area I, which roughly covers the GSC, because of the importance of the area for haddock spawning from February 1 to May 31, since 1986. The haddock no longer spawn in that area, but NMFS and the NEFMC have recommended leaving the closure in place for all gillnet gear to protect the northern right whale, and other whale species that use that area in the spring.

NMFS will continue to focus recovery/management efforts on ways to reduce human-induced mortality as a result of ship strikes and entanglement.

Comment 7: One commenter stated that the continued availability of these areas for use by northern right whales is critical to the survival of the species. The commenter further stated that under the authority of the Massachusetts Wetlands Protection Act, Massachusetts has already designated the portion of CCB critical habitat that occurs in Massachusetts waters as "Estimated Habitat" for a State-listed wetland wildlife species. Estimated habitat, under the Code of Massachusetts Regulations (CMR), 310 CMR 10.37, is defined as the estimated geographical extent of the habitats of State-listed species for which an occurrence within the last 25 years has been accepted by the Massachusetts Natural Heritage and Endangered Species Program and incorporated into its official database.

The commenter also stated that regulations have already been promulgated by Massachusetts law to prohibit vessels from approaching within 500m of a right whale in State waters. Fishery measures that reduce the risk of entanglements of marine mammals with fixed gear such as lobster gear and gillnets have also been adopted in Massachusetts. There are moratoria on gillnet and lobster licenses, a limit on the number of lobster pots per fisherman and limits on the length of lobster pot trawls and gillnets. Further restrictions on gillnets, some to complement what the NEFMC is considering to reduce by-catch of harbor porpoise, *Phocoena phocoena*, are being considered.

The commenter believed, however, that a designation of critical habitat at the Federal level would extend comprehensive, interjurisdictional protection to the right whale, a correct approach to conserving the species. The commenter further stated that since, the proposed rule said "fishing practices and locations may require special management considerations when the timing of the fishing season and the presence of the northern right whale overlap," NMFS should work closely with Massachusetts and the NEFMC to assess the need for, and nature of, special management considerations.

Response: NMFS recognizes and appreciates the efforts of the Commonwealth of Massachusetts to protect the northern right whale. NMFS is establishing a Northeast Implementation Team for the Recovery Plan (see Response to Comment 5). It is the intent of NMFS to work closely with these teams to determine for, and effectiveness of, special management measures.

Comment 8: One Federal agency supported the proposed critical habitat designation for the northern right whale, but was concerned that NMFS would be the Federal agency listed as having management responsibilities within the boundaries of Cape Cod National Seashore.

Response: Designation of critical habitat does not create management responsibilities for NMFS, nor does it give NMFS primary jurisdiction over Federal lands included in the critical habitat designation. While a Federal agency may undertake an activity that may affect either the listed species or critical habitat, and may be required to consult with NMFS pursuant to section 7, it is the action agency that decides whether to initiate consultation. Likewise, the action agency determines whether and in what manner to proceed with the action in light of its section 7 obligations and NMFS' biological opinion (See 50 CFR 402.15). NMFS' role is advisory in nature.

For example, while NMFS has responsibility over this listed species, the National Park Service (NPS) at Cape Cod National Seashore has major responsibilities for the long-term preservation of Cape Cod's natural resources, including this federally listed endangered species. As such, the NPS at Cape Cod National Seashore has management responsibilities within the proposed area of critical habitat that overlaps with the legislative boundary of the Cape Cod National Seashore. NMFS believes that the NPS and NMFS can work together on issues pertaining to the northern right whale.

Comment 9: One commenter suggested that two of the proposed critical habitat areas violate the prohibition on habitat designation outside the jurisdiction of the United States. The proposed critical habitat designation in the GSC and portions of the SEUS exceed the 12 nautical mile territorial sea recognized by the United States.

Response: The regulations state that "critical habitat shall not be designated within foreign countries or in other areas outside of the United States jurisdiction" (50 CFR 424.12(h)). The critical habitat designation falls within the 200 mile exclusive economic zone of the United States, and therefore is not outside of U.S. jurisdiction. Furthermore, critical habitat designation may impact the activities of Federal agencies, which are defined as "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas" (50 CFR 402.02).

Comment 10: Several commenters suggested that the northern boundary of the critical habitat, as recommended by the Recovery Team and proposed by NMFS (58 FR 29186, May 19, 1993), be extended further northward to 32° N latitude, approximately the mouth of the Savannah River. Based on data examined since the Recovery Team reviewed and recommended the critical habitat boundaries that were proposed in the critical habitat designation, the commenter stated that sightings corrected for effort (i.e., the number of right whales counted per survey mile since 1984) indicate that the number of right whales per mile of transect off St. Catherines Island, GA, was comparable to the number observed off Melbourne and Daytona Beach, FL, and greater than that off St. Augustine, FL, areas within the proposed critical habitat.

Several other commenters requested that no extension of the critical habitat include the mouth of the Savannah River be incorporated into a final designation until verified information on the presence of the right whale is publicly provided and a public hearing is held in Savannah, GA, so that the public can have an opportunity to comment. They further urged that any boundary modification be justified on firm scientific grounds, showing significant benefits to right whale recovery.

Response: NMFS believes that the most important winter/calving areas known are within the boundaries identified as critical habitat in the

proposed rule. The greatest number and highest densities of right whales have been observed in the Cape Canaveral region, with the second highest number occurring at the Georgia-Florida border. It is clear, however, that northern right whales occur outside this area, including near the mouth of the Savannah River, during the winter calving period and during their late-winter/spring migration northward.

The monitoring conducted around the mouth of the Savannah River during 1992/1993, and the near-daily monitoring conducted during the winter of 1993/1994 from Savannah south throughout the SEUS to approximately Jacksonville, FL, can be used to examine this issue. In these 2 years of monitoring near the mouth of the Savannah River (total approximately 90 days, 20 in 1992/1993 and approximately 70 thus far in 1993/1994) only four right whales have been sighted. The first sighting, on December 12, 1993, was of three whales moving south. These whales were resighted the following day near Brunswick, GA. The second and third sightings were also followed by resightings off Brunswick. In these cases, the time between resightings was only a few days, indicating that the whales were not remaining near the Savannah River but traveling through the area toward the core of the sighting distribution. Based on these data, NMFS sees no need to include the area as critical habitat at this time. NMFS recognizes that the sighting data is based on only 2 years of information, and that distributions between years can vary dramatically. NMFS will continually examine sighting data and may modify critical habitat boundaries in the future if warranted by additional sighting information.

Comment 11: One commenter suggested that there is a lack of data offered by NMFS supporting the presence of a substantial right whale population off the Cape Canaveral Florida coast (south of False Cape). The commenter cited information in the Recovery Plan for the Northern Right Whale, which indicates that only four sightings within the 5nm proposed habitat have been recorded south of the False Cape area prior to 1989, and questioned whether this is sufficient data on which to base a designation.

Response: The lack of sightings at the southern end of the designated SEUS area is explained, at least in part, by low sampling effort in that area. Sightings corrected for effort indicate that the area around Cape Canaveral may be used by right whales to a greater extent than presented by Kraus and Kenney (1991) and discussed in the Recovery Plan. The data do not support removal of the area from consideration.

Given the need to monitor and manage activities that might impact northern right whales in the area of Cape Canaveral, NMFS believes that it is appropriate to designate this area as critical habitat. The seasonal use, and extent of use, of any area will be considered during the ESA section 7 process on a case-by-case basis, but at present the area in question represents the southern limit to the only known calving area for this species, and is therefore considered critical.

Comment 12: Another Federal agency supported the proposed designation and submitted comments from the particular perspectives of the Gray's Reef National Marine Sanctuary (GRNMS) and the recently designated Stellwagen Bank National Marine Sanctuary (SBNMS).

The GRNMS lies to the north and east of the proposed critical habitat boundary in coastal Georgia; and the commenter recommended that the boundary of the proposed critical habitat be extended northward and seaward to include GRNMS. The commenter stated that Grays Reef is particularly vital to the critical habitat designation because the waters off Georgia and northern Florida serve as calving grounds for this species. The commenter also stated that personnel at GRNMS could provide additional resources for observing and monitoring these whales as part of the Sanctuary's routine operations, as well as provide substantial support to the education and outreach objectives listed in the Northern Right Whale Recovery Plan.

The commenter continued by stating that the recently designated SBNMS overlaps slightly with the proposed critical habitat area (at the northern end of CCB). The commenter felt that the proposed designation, in conjunction with the implementation of the SBNMS, would provide additional opportunities for coordinated efforts to enhance the potential for recovery of this critically endangered marine species. Also, some or all of the "special management considerations or protections" identified in the proposed designation as being potentially required to protect and promote the recovery of the northern right whale population using the Stellwagen Bank environment (i.e., vessel traffic, fishing, pollution, mining and gas exploration) are also addressed by the SBNMS management plan. With the exception of fishing, these activities are currently either regulated directly, or are listed as subject to sanctuary regulation.

Furthermore, the Marine Protection, Research and Sanctuaries Act (title III), as amended in 1992, established the requirement for consultation between the Secretary of Commerce (NOAA) and any Federal agency proposing to undertake an activity in the vicinity of a National Marine Sanctuary that may result in adverse impacts on sanctuary resources or qualities, including private activities authorized by licenses, leases or permits. Such consultation must occur prior to initiation of the proposed activity. From the perspective of administrative structure, therefore, there are opportunities for both NMFS and NMSP to coordinate their programmatic objectives.

Response: NMFS does not believe that extending the boundary of the SEUS critical habitat seaward to include the GRNMS is necessary (see Response to Comment 10). However, NMFS does agree that the Grays Reef program could provide additional monitoring of these whales, substantial support to the education and outreach objectives listed in the Northern Right Whale Recovery Plan and additional opportunities for coordinated efforts to enhance the potential for recovery of this critically endangered marine species.

Comment 13: A commenter recommended that NMFS designate Delaware Bay as critical habitat for the northern right whale, stating that Delaware Bay is habitat that is representative of the historic geographical and ecological distribution of the species.

Response: The criteria specified under 50 CFR 424.12 to be considered in designating critical habitat, and described in the preamble to the proposed designation, must consider the requirements of the species, including habitats that are representative of the historic geographical and ecological distributions of the species. Section 3(5)(A)(ii) of the ESA states that areas outside the current geographical range of a species can be designated if the Secretary determines that such areas are essential for the conservation of the species. The regulations to the ESA interpret this provision to mean that the Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(c)). Even where the area is presently occupied by the species, section 3(5)(c) states that, with certain exceptions determined by the Secretary, "critical habitat shall not include the entire geographic area which can be occupied by the * * * species."

Although known to have been used by right whales, it is not completely

understood to what extent Delaware Bay was used, or whether this area would ever have been considered critical habitat. It is known, however, that the area is now bypassed by northern right whales during their annual movements. NMFS believes that the current high-use areas are identified in this rule, but recognizes that the areas designated represent the minimal space required by right whales to ensure population growth. Designating Delaware Bay as critical habitat would not enhance the likelihood of recovery for this species. If evidence to the contrary becomes available, critical habitat boundaries can be modified.

Comment 14: Several commenters did not oppose the designation of the critical habitat designation for the northern right whale, but were concerned with the "general" language of the proposed designation and felt there was no real need for it. Rather, they felt that a public awareness program for shipping interests is sufficient. They further expressed concern that the language of the preamble to the proposed designation stating that "habitats will be given special consideration in section 7 consultations" would become a vehicle to attack offshore dredge disposal and port expansion. The commenters requested that NMFS reconsider the need for the proposed designation as it applies to the southern coastal area, given that there is already an active task force working to prevent collisions between vessels and the northern right whale and that the other protections of the ESA still apply.

Finally, one of the commenters wanted the channel, fairways to sea lanes, disposal sites, access routes to disposal sites and nearshore berm areas in the SEUS to be excluded from the critical habitat designation. The commenter noted that these areas can be excluded if the overall benefits of exclusion outweight the benefits of designation, unless the exclusion results in the extinction of the species.

Response: Federal agencies active within the range of the northern right whales are already required to consult with NMFS regarding projects and activities that may affect the species pursuant to section 7 of the ESA. Federal agencies are required to evaluate their activities with respect to northern right whales and to consult with NMFS prior to engaging in any action that may affect the critical habitat to ensure that their actions are not likely to result in its destruction or adverse modification. Regarding the SEUS critical habitat specifically, these actions are being reviewed by the Southeast Implementation Team, through section 7 consultations and agreements already in place, and through the expanded efforts of the Implementation Team to reach the private and public sectors.

Finally, frequent travel by commercial vessels in these areas represents a considerable threat to northern right whales. Therefore, NMFS does not agree that corridors frequently traveled by vessels within the designated critical habitat should be excluded.

Comment 15: One federal agency was concerned that the proposed designation was neither appropriate nor necessary to preserve the species. The commenter felt that the current proposal merely designates areas of highest concentration of the whales and lists their characteristics, rather than considers the physical or biological features that are essential to the conservation of the species. To warrant critical habitat designation, the commenter felt that a better understanding of the species' biological and physical requirements is needed.

Response: NMFS agrees that critical habitat designation must include areas meaningful to the specie's conservation. Consequently, NMFS is not designating the northern right whale's entire range, which was suggested by several commenters, but is focusing attention on particular areas that have essential features and that may be in need of special management consistent with the ESA and implementing regulations. The section of this preamble entitled "Essential Habitat of the Northern Right Whale" has been expanded from the proposed rule to address those biological and physical features and to identify those principal constituent elements, such as feeding sites, breeding grounds and calving areas within the designated areas, that are considered essential to the northern right whale. The section in the proposed designation entitled "Need for Special Management Consideration" summarizes the justification for the designation of these three special areas.

NMFS has concluded, based on the best available scientific evidence and the biological and ecological needs of the species, that the areas in coastal and offshore waters that are being designated as critical habitat for northern right whales contain the appropriate environmental and biological characteristics required by the species to recover, and may warrant consideration of special management measures.

NMFS has also concluded that the designation of waters within the SEUS is warranted, given the geographic concentration of northern right whales during the winter/calving period, the extreme endangered status of this species, the importance of the area to the reproductive potential (recovery) of the species, the possible impacts of commercial activities on right whales that may require monitoring and the fact that this area may be in need of special management measures.

The potential for special management considerations does not necessarily mandate restriction or elimination of activities. Close monitoring of activities and additional research also constitute special management considerations. The existing information, discussed in the preamble to this final designation, supports this designation of critical habitat.

Comment 16: Another Federal agency commenter, citing the EA prepared by NMFS, stated that the direct impact of the designation affects Federal agencies and only duplicates that protection provided under the section 7 jeopardy provision. According to the commenter, the primary benefit cited for the proposed designation is increased awareness. The commenter believed that previous consultations with Federal agencies and meetings with the public have heightened awareness, and therefore, that more regulations are unnecessary. In summary, the commenter opposed the designation. However, the commenter wanted to facilitate more progressive conservation of the species and to cooperate in the development of interagency management plans to reduce impacts to the whales in high density areas. The commenter believed such measures will allow NMFS and other Federal agencies more flexibility in advancing recovery of the northern right whale.

Response: NMFS restates that, while designating critical habitat helps focus the attention of Federal agencies on the importance of a designated area for an endangered species, state and private agencies may also give special consideration toward conservation and management actions in these areas. A designation of critical habitat provides some incremental protection to northern right whales in those cases where the action may not result in a direct impact to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present, or when an activity is conducted outside the designated area), but may affect the critical habitat.

Finally, NMFS agrees with the commenter that a more progressive conservation program to protect this species is necessary, and that the development of interagency

management plans to reduce impacts to the whales in high density areas is the best approach. Therefore, NMFS will continue to work through the Southeast Implementation Team and through ongoing section 7 consultations to advance recovery efforts for northern right whales in these waters. NMFS appreciates the efforts that have already been made toward protecting these animals, and believes continued research and management discussions will result in a cost-effective, flexible program that will enhance the recovery of the northern right whale.

Comment 17: One commenter supported reasonable activities to protect the right whale at an acceptable cost and understood that the designation will not, in itself, impose additional regulations affecting activities within the habitat area. The commenter shared the concerns of other port operators that designation of critical habitat may lead to adoption of rules regulating the speed and routes of commercial vessels which may cause vessels to leave these ports at great economic cost to the port.

The commenter was concerned that all proposed special management measures that could impose increased costs should be adequately evaluated to assure that resulting benefits justify those costs, and that measures are implemented in the most cost-effective manner. The commenter suggested that effective alternative protection methods with significantly less cost may exist, although it did not provide specific recommendations.

This commenter has joined together with others to institute an education and information dissemination plan designed to protect the right whale. The commenter believed that this cooperative effort is the method most likely to be effective in protecting the right whale at reasonable cost in northern Florida and southern Georgia coastal waters.

Response: NMFS does not expect any additional restrictions on use of the areas as a result of this designation. Therefore, direct economic impacts associated with this designation are expected to be minimal.

NMFS agrees that there may be alternative protection methods. The possibility of such alternatives, however, does not eliminate the need to designate critical habitat. These should be brought to the attention of the Southeast Implementation Team, which can review and evaluate them.

Comment 18: One commenter was concerned about the potential effects of this designation on beach nourishment projects done in conjunction with the ACOE. Currently the commenter and the ACOE are studying the feasibility of beach nourishment at several eroding areas of the Atlantic shoreline. The commenter continued that the potential window for beach nourishment projects has already been limited by the presence of essential nesting habitat for endangered and threatened species of sea turtle. The nesting seasons runs from May 1 through October 1 of each year, limiting the timeframe for nourishment projects to the winter months.

Another Federal agency stated that any hopper dredge restrictions implemented to avoid the December through March time period of right whale calving and presence in the area would be burdensome. The commenter encouraged working out a timeframe that would allow use of a hopper dredge and take into account the winter right whale calving season and the summer period of high abundance for Kemp's ridley turtle (*Lepidochelys kempii*) and manatee (*Trichechus manatus*) in the Kings Bay area.

Response: NMFS realizes that the present dredging period was scheduled to accommodate the presence of several species of sea turtles in these waters, and also recognizes the seasonal limits for beach nourishment projects. The present seasonal restriction on dredging is an essential management measure, given the increased densities of sea turtles in coastal waters during the warmer months.

The designation of critical habitat for right whales will not affect the scheduling of this activity. NMFS does not intend to alter the present schedule through this designation, but rather will continue to require the present level of monitoring of dredging activities during winter months to reduce impacts to northern right whales. Over the years, there have been several very near misses of right whales with dredges that were avoided due, at least in part, to observer coverage on the dredges.

Comment 19: Several organizations and individuals had comments regarding commercial fishing restrictions. One commenter recommended seasonal restrictions on set-gillnet fisheries and multiple trap American lobster, *Homarus americanus*, fisheries within known right whale habitat, and felt that fines and enforcement procedures for individuals violating this and other restrictions should be mandated.

Another commenter recommended that NMFS expand the rule to include conservation measures to reduce the likelihood of right whales being struck by boats or becoming entangled in fishing gear. Specifically, the commenter recommended that NMFS prohibit the use of unattended drift and sink gillnets in all three areas being designated as critical habitat during the seasons that right whales are likely to occur in the area.

Another commenter suggested that unattended use of gillnets should be prohibited from December 1 through March 31 (the time that northern right whales are in the area), but that commercial fishing need not be restricted on the winter grounds.

NMFS also received several comments from individuals and organizations recommending against designating critical habitat because they believed it would lead to further restrictions of fishing activities. One such commenter asserted that the desigation may eventually result in the halting of recreational fishing outside Sebastian Inlet, FL, and for that reason was opposed to designating critical habitat. Another commenter felt that the designation of critical habitat would increase regulation of commercial fishing and for that reason opposed the designation.

Another commenter stated that commercial fishermen throughout the SEUS support efforts to protect the northern right whale through participating in whale sighting programs, and by radioing positions of whales to other vessels to avoid collisions. Thus, the commenter felt declaring this area as critical habitat was not necessary to avoid collisions, and may unnecessarily affect fishermen as well as other commercial activities.

Response: As stated in the proposed critical habitat designation, the only direct impact of a critical habitat designation is through the provisions of section 7 of the ESA, which applies only to those actions authorized, funded or carried out by Federal agencies. This final critical habitat designation contains no land use or fishing regulations, and will not directly affect private activities. Even where there is Federal involvement, NMFS anticipates that this final critical habitat designation, by itself, will not restrict private activities in a manner or to an extent that these activities are not already affected as a result of the listing of this species as endangered. If, in the future, NMFS determines that restrictions on human activities are necessary to protect northern right whales or their habitat, such action would be preceded by an opportunity for public review and comment.

Comment 20: One commenter stated that pollutant discharges in CCB may represent a continuous source of

degradation to essential habitats. Sewage discharges, dredging activities, dredge spoil disposal and non-point sources all contribute contaminants into this relatively shallow and extraordinarily productive environment. The commenter further stated that the Massachusetts Water Resources Authority (MWRA) is in the process of combining, upgrading and relocating its outfalls approximately 15km out into Massachusetts Bay, or roughly 40km to the north of the critical habitat boundary. The commenter felt that research should be continued and broadened to address all aspects of the species' biology, behavior and habitat requirements, as well as the specific sources of pollution that threaten to diminish the quality of the habitat for northern right whales.

The commenter stated that in CCB there is a need to establish a water quality monitoring program that focuses on endangered species and incorporates sampling of critical parameters at the appropriate spatial and temporal scales.

Response: As previously stated, NMFS is coordinating the development of a Right Whale Recovery Plan Implementation Team that will address the possible impacts to right and humpback whales from activities in Massachusetts Bay that may affect CCB (see Comment 5).

Comment 21: One Federal agency outlined those protective measures that have been developed over the years through ESA section 7 consultations with NMFS and commended the efforts of NMFS, Southeast Regional Office, in initiating discussions with EPA, Region IV, to propose moving the Kings Bay ocean dredged material disposal site closer to the navigation channel. A closer disposal site would reduce the distance traveled by hopper dredges, thereby reducing the potential for collisions with right whales.

The commenter did not anticipate additional restrictions on these activities because of the critical habitat designation.

Response: NMFS will continue to work with all Federal agencies through the section 7 consultation process on all protected species issues to ensure the continued recovery and protection of endangered and threatened species.

Classification

It has been determined that this rule is not significant for purposes of E.O. 12866.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA generally are categorically excluded from the requirements to prepare on EA or Environmental Impact Statement. However, in order to more clearly evaluate the minimal environmental and economic impacts of critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see ADDRESSES).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.13 is added to subpart B to read as follows:

§ 226.13 North Atlantic Ocean.

Northern Right Whale *(Eubalaena glacialis)*

(a) *Great South Channel.* The area bounded by 41°40′ N/69°45′ W; 41°00′ N/69°05′ W; 41°38′ N/68°13′ W; and 42°10′ N/68°31′ W (Figure 6 to part 226).

(b) *Cape Cod Bay, Massachusetts.* The area bounded by 42°04.8′ N/70°10′ W; 42°12′ N/70°15′ W; 42°12′ N/70°30′ W; 41°46.8′ N/70°30′ W and on the south and east by the interior shore line of Cape Cod, Massachusetts (Figure 7 to part 226).

(c) *Southeastern United States.* The coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles; and the coastal waters between 30°15′ N and 28°00′ N from the coast out 5 nautical miles (Figure 8 to part 226).

3. Figures 6 through 8 are added to part 226 to read as follows:

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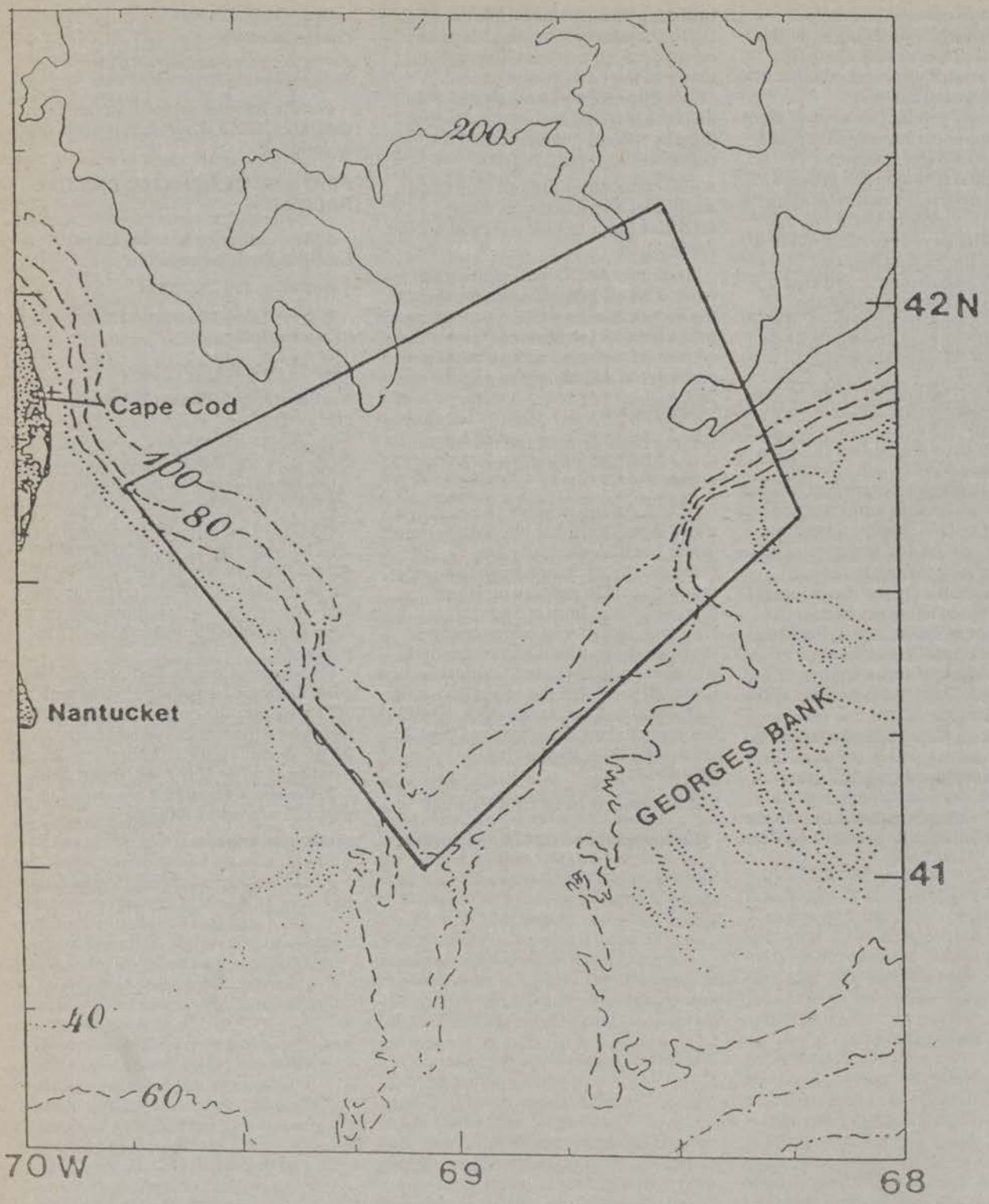

Figure 6. The area designated as critical habitat in the Great South Channel includes the area bounded by 41°40'N/69°45'W; 41°00'N/69°05'W; 41°38'N/68°13'W; and 42°10'N/68°31'W.

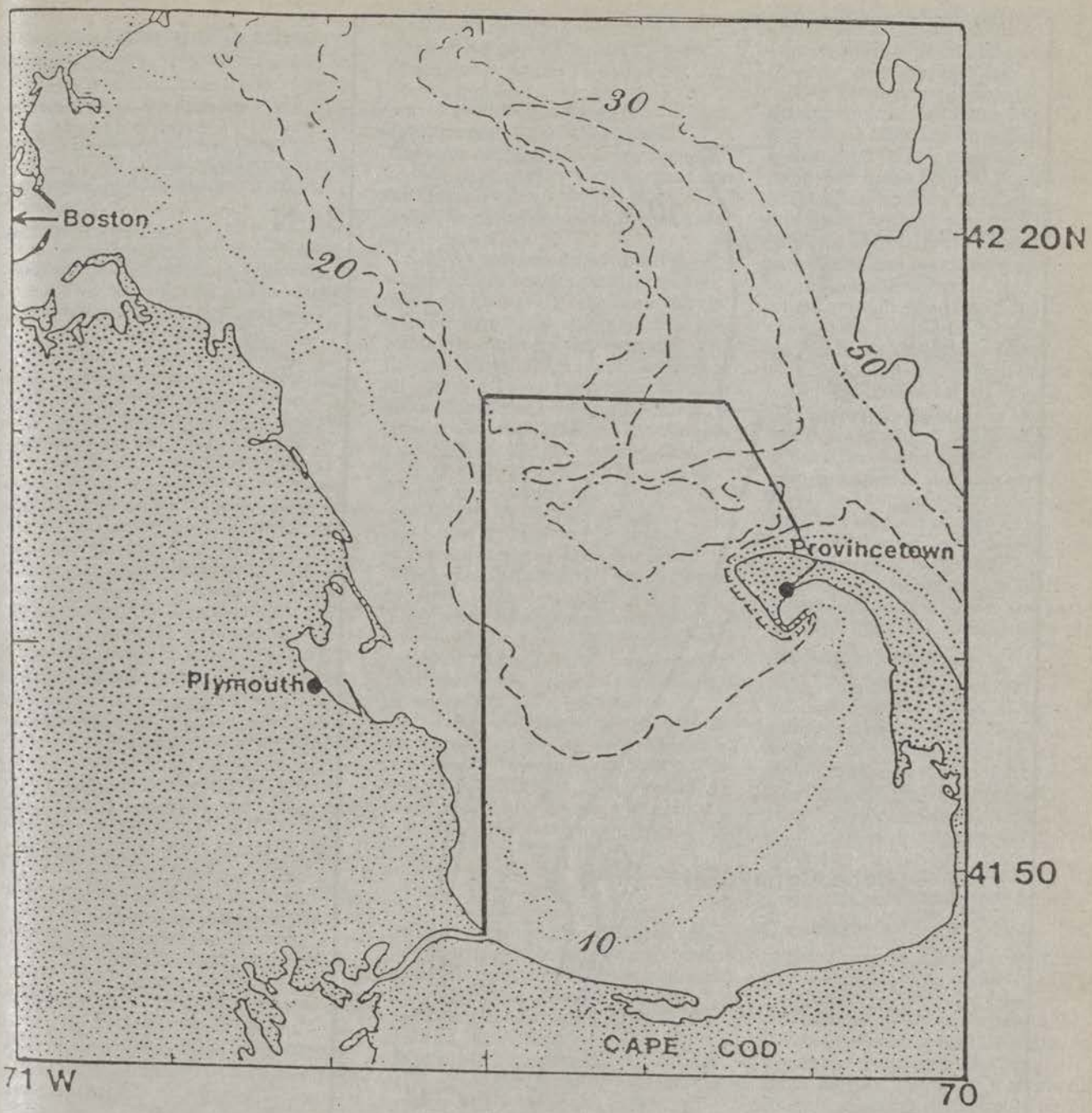

Figure 7. The area designated as critical habitat in Cape Cod Bay/Massachusetts Bay includes the area bounded by 42°04.8'N/70°10'W; 42°12'N/70°15'W; 42°12'N/70°30'W; 41°46.8'N/70°30'W; and on the south and east by the interior shore line of Cape Cod, MA.

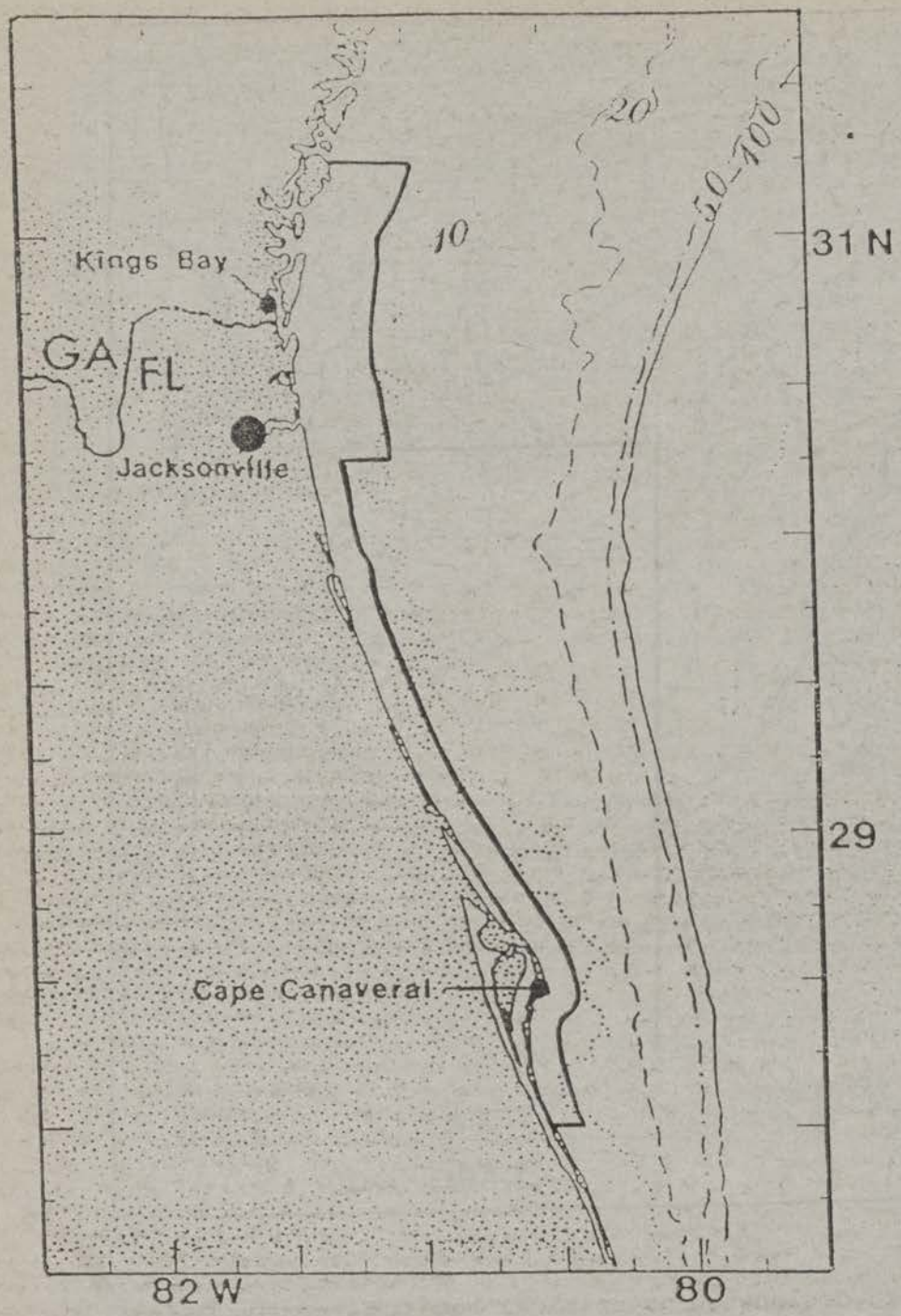

Figure 8. The area designated as critical habitat in the Southeastern United States includes waters between 31°15'N (approximately located at the mouth of the Altamaha River, GA) and 30°15'N (approximately Jacksonville, FL) from the shoreline out to 15 nautical miles offshore, and the waters between 30°15'N and 28°00'N (approximately Sebastian Inlet, FL) from the shoreline out to 5 nautical miles.

[FR Doc. 94–13500 Filed 6–2–94; 8:45 am]
BILLING CODE 3510–22–C

50 CFR Part 625

[Docket No. 940241–4155; I.D. 013194A]

RIN 0648–AG00

Summer Flounder Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This amendment modifies the minimum mesh-size requirement, the schedule for establishing the annual recreational fishery management measures, and the dimensions of the fish box or tote; provides for an experimental fishery; and prohibits the use of twisted mesh and interference with observers and sea samplers. The intended effects are to minimize the effects of regulatory restrictions on industry, and to use the best available data to assess the fishery, without compromising the FMP objective to rebuild the stocks of summer flounder.

DATES: Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, the redesignation of paragraphs (d) and (e) of § 625.24 as paragraphs (c) and (d), § 625.24(f), and § 625.25(d) are effective May 31, 1994. Sections 625.8(c)(9) and (e), 625.20(c), 625.24(e), and 625.28 are effective July 5, 1994.

ADDRESSES: Copies of Amendment 6, the environmental assessment, the regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. A proposed rule to implement the amendment was published in the **Federal Register** on February 23, 1994 (59 FR 8592). Copies of the amendment are available from the Council upon request (see **ADDRESSES**). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

Background concerning the development of the management measures contained in Amendment 6 and the reasons they were adopted by the Council were provided in the preamble of the proposed rule and are not repeated here.

NMFS approved Amendment 6, which allows vessel operators to: (1) Carry nets with different size mesh on board their vessels; and (2) exceed the minimum-mesh seasonal summer flounder threshold amounts, as long as all nets that do not meet the minimum-mesh requirement are appropriately stowed once the threshold amounts of summer flounder are retained. Once stowed, these nets cannot be used for the remainder of the fishing trip.

NMFS is also implementing a regulation that allows the Director, Northeast Region, NMFS (Regional Director), to authorize an experimental fishery to collect management information in certain circumstances to give effect to section 9.4.2 of the FMP regarding information and data needs. The Council is particularly interested in having additional mesh studies conducted to augment the results of the mesh studies done in New York and New Jersey. However, the Council was firm in its intent that no experimental fishery should result in a quota being exceeded. This restriction maintains the integrity of the mortality reduction schedule for summer flounder, the main objective of Amendment 2.

This rule also implements a prohibition on the use of twisted mesh. Nets constructed of twisted mesh, when towed, do not conform to the minimum-mesh requirement and violate the prohibition found at § 625.8(a)(6). The addition of this prohibition conforms the summer flounder regulations with the Northeast multispecies regulations found at 50 CFR part 651. Such conformity is desirable since multispecies and summer flounder can be caught on the same fishing trip. The Council adopted another provision that is also implemented in this final rule which modifies the dimensions of the fish box or tote, referred to in § 625.25(d), to conform to those used in the Northeast multispecies regulations.

This rule revises the prohibition found at § 625.8(c)(9) to prohibit interference with a sea sampler or observer on board a vessel for any purpose, and not just for the activities under §§ 625.26 and 625.27, as currently expressed in this prohibition. Observers placed on board a vessel engaged in an experimental fishery should have the same protection afforded to other observers and sea samplers.

NMFS is also modifying the annual fishing measures schedule found at § 625.20(c). The date on which recreational fishing measures are to be published in the **Federal Register** is changed to February 15 to allow recreational fishery data from the previous year to be included in the assessment and monitoring process. The total allowable removals from the stock, which are translated into a coastwide commercial quota and a recreational harvest limit, as well as additional measures for the commercial fishery, must be published on or before October 15 of each year. This is the latest date that these measures can be announced in the form of a proposed rule or a proposed specification and still allow the states an opportunity to implement them on January 1 of each year. Marine recreational survey data, which allow the recreational harvest limit to be converted into a possession limit and a recreational fishing season, are not available until late each calendar year.

Comments and Responses

One comment in support of Amendment 6 was received during the public comment period. The commenter believed that the amendment is a vital part of the preservation of the mixed trawl fishery and will contribute to the overall safety of vessels participating in the fishery. NMFS agrees with these comments.

No negative comments were received during the public comment period.

Classification

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

When this rule was proposed, the General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities for the reasons set forth in the RIR prepared by the Council. A copy of the RIR may be obtained from the Council (see **ADDRESSES**). As a result, an IRFA was not prepared.

Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, redesignation of paragaphs (d) and (e) of 625.24 as paragraphs (c) and (d), § 625.24(f), and § 625.25(d) are effective immediately. Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, § 625.24(f), and § 625.25(d) relieve restrictions on the fishery by

allowing more than one net on board, if properly stowed, or allow varying amounts of summer flounder on board, or both, and under section 553(d)(1) of the Administrative Procedure Act (APA), are not subject to a 30-day delay in effective date. The redesignation of paragraphs (d) and (e) to paragraphs (c) and (d) in § 625.24 is not substantive and under section 553(d) is not subject to a 30-day delay in effective date.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 625 is amended to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Section 625.8, paragraphs (a)(6), (a)(7), and (c)(9) are revised and a new paragraph (e) is added to read as follows:

§ 625.8 Prohibitions.

(a) * * *

(6) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

(7) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

* * * * *

(c) * * *

(9) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance to an observer or sea sampler conducting his or her duties aboard a vessel; or

* * * * *

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 625.28 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

3. Section 625.20, paragraph (c) is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the **Federal Register** a proposed rule by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish in the **Federal Register** a proposed rule by February 15 to implement additional management measures for the recreational fishery, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on a proposed rule, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

* * * * *

4. Section 625.24, is amended by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by adding new paragraphs (e) and (f) to read as follows:

§ 625.24 Gear restrictions.

* * * * *

(e) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (d) of this section, which obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(f) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31 or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30 that are subject to the minimum mesh size may not have "available for immediate use" any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications, and that can be shown not to have been in recent use, is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the net;

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the **Federal Register**.

5. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *

(d) Owners and operators of otter trawl vessels issued a permit under § 625.4, that fish with, or possess nets or pieces of net on board, that do not meet

the minimum mesh requirements and that are not stowed in accordance with § 625.24(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored, so as to be readily available for inspection, in standard 100-lb (45.3 kg) totes or fish boxes having a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet or 70.79 cubic cm).

* * * * *

6. Section 625.28 is added to read as follows:

§ 625.28 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the summer flounder resource and fishery; or

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[FR Doc. 94–13518 Filed 5–31–94; 1:57 pm]
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50 CFR Parts 672 and 675

[Docket No. 900833–1095; I.D. 052694E]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1994. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in the Alaska groundfish trawl fisheries under the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1994, through 12 midnight, A.l.t., December 31, 1994. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1994.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also must comply with red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red crab bycatch rate standards for each fishery monitored under the incentive program be published in the **Federal Register**. Any vessel operator whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, the periods specified as 1994 fishing months were published in the **Federal Register** on December 15, 1993 (58 FR 65556).

Halibut and red king crab bycatch rate standards for the first half of 1994 also were published in the **Federal Register** on December 15, 1993. At its April 1994 meeting, the Council recommended bycatch rate standards for the second half of 1994. These standards are set forth in Table 1. As required by §§ 672.26(c) and 675.26(c), the Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information and considerations:

1. Previous years' average observed bycatch rates;
2. Immediately preceding season's average observed bycatch rates;
3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21;
4. Anticipated groundfish harvests;
5. Anticipated seasonal distribution of fishing effort for groundfish; and
6. Other information and criteria deemed relevant by the Director of the Alaska Region, NMFS (Regional Director).

Bycatch Rate Standards for Pacific Halibut

With the exception of the GOA "other trawl" fishery, the Council's recommended halibut bycatch rate standards for the 1994 trawl fisheries are unchanged from those implemented in 1993. The recommended 1994 standards are based largely on anticipated seasonal fishing effort for groundfish species and 1991–1994 halibut bycatch rates observed in

specified trawl fisheries. Council deliberations on seasonal bycatch rate standards assumed that directed fishing for Pacific cod by vessels using trawl gear would be closed prior to July 1 (59 FR 24361, May 11, 1994). Council deliberations also considered the August 15 opening date of the 1994 Bering Sea pollock 'B' season (§ 675.23(e)).

The recommended halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" fisheries approximate the average annual rates observed on trawl vessels participating in these fisheries during the past 3 years (5 kg halibut/metric ton (mt) of groundfish).

The halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at §§ 672.20(f) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The Council's recommended halibut bycatch rate standards for the BSAI "other trawl" fisheries (30 kg halibut/mt groundfish) is unchanged from 1992 and 1993. The Council recommended a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA "other trawl" fishery. This bycatch rate standard was established for the first half of 1994, but is a 20 percent reduction from the standard implemented for this fishery during 1992 and 1993 (50 kg halibut/mt groundfish). The Council's action on the 1994 bycatch rate standard for the GOA "other trawl" fishery was intended to continue, to support other management measures implemented under an emergency interim rule (59 FR 6222, February 10, 1994) that was extended through August 9, 1994 (59 FR 24965, May 13, 1994). A proposed rule to implement these measures after the emergency interim rule expires was published May 4, 1994 (59 FR 23044). The interim management measures include: (1) The apportionment of the GOA trawl halibut bycatch limit between "shallow water" and "deep water" trawl fisheries, and (2) adjustment of directed fishing standards to change the way retainable bycatch amounts of groundfish species are calculated.

The bycatch rate standards recommended for the GOA and BSAI "other trawl" fisheries are based on the Council's intent to simplify the GOA and BSAI incentive program by specifying a single bycatch rate standard for the aggregate trawl fisheries that are not assigned fishery-specific bycatch rate standards under the incentive program, yet maintain the Council's objective of reducing overall halibut bycatch rates in the Alaska groundfish trawl fisheries. Observer data collected from the 1993 GOA "other trawl" fishery show third and fourth quarter halibut bycatch rates of 34 and 38 kg halibut/mt of groundfish, respectively. The first quarter rate from 1994 was lower, at 11 kg halibut/mt of groundfish. Observer data collected from the 1993 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 5 and 4 kg halibut/mt of groundfish, respectively. The average first quarter rate from the 1994 BSAI "other trawl" fishery was 9 kg halibut/mt groundfish. The average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries are lower than the Council's recommended bycatch rate standards for these fisheries. However, the Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries would continue to provide an incentive to vessel operators to avoid unusually high bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Bycatch Rate Standards for Red King Crab

The Council's recommended red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1994. This standard is the same as that recommended for 1992 and 1993 and for the first half of 1994. The justification for this standard is discussed in the December 15, 1993, publication of bycatch rate standards for the first half of 1994.

Vessels are not anticipated to participate in either the yellowfin sole or "other trawl" fisheries in Zone 1 during the second half of 1994 because of fishery closures. Directed fishing for yellowfin sole in Zone 1 by vessels using trawl gear is closed for the remainder of 1994 because the Zone 1 *C. bairdi* Tanner crab bycatch allowance specified for this fishery has been reached (59 FR 26145, May 19, 1994). Directed fishing for groundfish species included in the "other trawl" fishery (defined at § 675.26(b)(4)) also is prohibited in Zone 1 because of halibut, red king crab, or *C. bairdi* Tanner crab bycatch restrictions (rockfish, Greenland turbot, sablefish, arrowtooth flounder (59 FR 7656, February 16, 1994); rock sole and other flatfish (59 FR 10082, March 3, 1994); and Pacific cod (59 FR 23461, May 11, 1994)). Nonetheless, NMFS is publishing a red king crab bycatch rate standard for the "other trawl" fishery in Zone 1 consistent with regulations at § 675.26(c).

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). Therefore, the Regional Director concurs with the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1994 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director, pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

Classification

This action is taken under 50 CFR 672.26 and 675.26.

This action is exempt from OMB review under E.O. 12866.

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

Dated: May 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY, FOR THE SECOND HALF OF 1994 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	1994 bycatch rate standard during the period of July 1 through December 31
Halibut bycatch as kg of halibut/mt of allocated groundfish catch:	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY, FOR THE SECOND HALF OF 1994 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery	1994 bycatch rate standard during the period of July 1 through December 31
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish):	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

[FR Doc. 94–13491 Filed 5–31–94; 9:42 am]

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Proposed Rules

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. 93–165–1]

RIN 0579–AA33

National Environmental Policy Act Implementing Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act. These procedures would replace APHIS Guidelines Concerning Implementation of NEPA Procedures.

DATES: Consideration will be given only to comments received on or before July 18, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–165–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Pizel, Branch Chief, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION:

Background

The regulations of the President's Council on Environmental Quality (CEQ) implementing section 102(2) of the National Environmental Policy Act (hereinafter referred to as NEPA or the Act) are applicable to and binding on all agencies of the Federal Government. Pursuant to the CEQ implementing regulations, the Animal and Plant Health Inspection Service (APHIS) is proposing to implement procedures to ensure that its planning and decisionmaking are in accordance with the policies and purposes of NEPA. The CEQ implementing regulations direct that agencies shall include, at a minimum, procedures required by 40 CFR 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), 1507.3(b)(2), and 1508.4. APHIS' proposed procedures would supplant the APHIS Guidelines Concerning Implementation of NEPA Procedures originally published in the **Federal Register** on August 28, 1979 (44 FR 50381–50384) and corrections as published in the **Federal Register** on August 31, 1979 (44 FR 51272–51274).

The Animal and Plant Health Inspection Service

APHIS, established in 1972 (7 CFR 371.1(a)), is a regulatory and facilitative agency responsible for the protection of plant and animal health. Its mission is to protect American agriculture by providing leadership in ensuring the health, safety, and care of animals and plants, improving agricultural productivity and competitiveness, and contributing to the national economy and public health and safety. APHIS accomplishes this mission by:

1. Excluding exotic plant and animal pests and diseases and noxious weeds.
2. Detecting, monitoring, and managing plant and animal pests and diseases and noxious weeds.
3. Facilitating agricultural imports and exports.
4. Providing for pure, safe, and efficacious veterinary biologics.
5. Protecting the welfare of certain animals.
6. Controlling nuisance mammals and birds.
7. Collecting, analyzing, and disseminating information.
8. Providing scientific and technical services.

APHIS' mission is carried out under five functional areas:

Pest and disease exclusion. APHIS conducts inspection and quarantine activities at U.S. ports-of-entry to prevent the introduction of exotic animal and plant diseases and pests. APHIS also participates in inspection, survey, and control activities in foreign countries to reinforce its domestic activities.

Animal and plant health monitoring. APHIS conducts programs to assess animal and plant health and to detect endemic and exotic diseases and pests.

Pest and disease management programs. APHIS carries out or cooperates in programs to: Control and eradicate animal and plant pests and diseases; reduce losses caused by wildlife damage; provide technical assistance to State and local governments, farmer or rancher groups, foundations, and the public; and ensure compliance with interstate movement and other disease and pest control regulations within the jurisdiction of APHIS.

Animal care. APHIS conducts regulatory activities that ensure the humane treatment and care of certain animals.

Scientific and technical services. APHIS carries out other activities, including the licensing and testing of veterinary biologicals and the development of standards to ensure their safety and effectiveness, diagnostic activities for control and eradication programs, applied research for the development of methods and tools, regulatory oversight to prevent damage and reduce risk, and regulation of imports and exports of terrestrial plants under the Endangered Species Act.

APHIS conducts cooperative programs with State and local agencies and organizations and foreign countries to eradicate, manage, or prevent the movement of plant and animal diseases and pests. More than 2,500 exotic insects, plants and animal diseases, weeds, and vertebrate pests have been identified as posing a potentially serious threat to agriculture in the United States.

APHIS' inspection and regulatory programs help prevent the introduction into the United States of animal and plant pests and diseases and noxious

weeds of foreign origin and the spread of certain established animal and plant pests and diseases and noxious weeds within the country. Although limited inspection and testing activities take place in certain countries of origin, APHIS' port-of-entry inspection and quarantine are the primary line of defense against exotic pests and pathogens. However, notwithstanding these efforts, pests and pathogens occasionally are introduced into the United States.

Therefore, in order to comply with NEPA, CEQ, and U.S. Department of Agriculture regulations, we are proposing to establish regulations in 7 CFR by adding a new part 372 (§§ 372.1 through 372.10) as described below:

Section-by-Section Analysis

Purpose (Section 372.1)

This section would set forth the purpose of the procedures, namely to implement section 102(2) of NEPA by assuring early and adequate consideration of environmental factors in APHIS planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under NEPA. This strategy of early and integrated consideration of environmental factors, diligently pursued, will facilitate achieving the requirements of sections 101 and 102(1) as required by 40 CFR 1505.1(a).

Designation of Responsible APHIS Official (Section 372.2)

This section would designate the Administrator of APHIS, or an agency official to whom the Administrator may formally delegate the task, as the individual responsible for overall review of APHIS' NEPA compliance.

Information and Assistance (Section 372.3)

This section would provide that information, including the status of studies, and the availability of reference materials, as well as the informal interpretations of APHIS' NEPA procedures and other forms of assistance, will be made available upon request to: Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8565; FAX (301) 436–8669.

Definitions (Section 372.4)

In addition to the definitions of terms contained in CEQ's implementing regulations, which are incorporated by reference herein, this section would define four terms which are unique to these proposed regulations. As used in these procedures, the term "APHIS" means the Animal and Plant Health Inspection Service; "Decisionmaker" means the agency official responsible for executing findings of no significant impact in the environmental assessment process and the record of decision in the environmental impact statement process; "Department" means the United States Department of Agriculture (USDA); and "environmental unit" means Environmental Analysis and Documentation, which is an analytical unit in Biotechnology, Biologics, and Environmental Protection, charged with the responsibility of coordinating APHIS compliance with NEPA and other environmental laws and regulations.

Classification of Actions (Section 372.5)

This proposed section, developed in four parts, complies with the directive in CEQ's implementing regulations that agencies classify actions for purposes of the NEPA process (40 CFR 1507.3(b)(2)). The CEQ regulation call for development of "specific criteria for and identification of those typical classes of action" that (1) normally require environmental impact statements, (2) normally require environmental assessments but not necessarily environmental impact statements, (3) normally require neither environmental impact statements nor environmental assessments and are therefore categorically excluded, and (4) normally are categorically excluded but, because of extraordinary circumstances, may have significant environmental effects and require preparation of environmental documentation.

1. Actions Normally Requiring Environmental Impact Statements

An environmental impact statement (EIS) will normally be prepared for the following types of actions:

- Administrative procedures that seek to establish broad-scale, significant, impact-generating strategies, methods, or techniques (e.g., treatment options of individual large-scale aerial application of chemicals) as the means of dealing with pervasive animal and plant health issues within the purview of APHIS.

This category of action might include (1) contingency or "emergency" response strategies (comprehensive in scope)—the design of which is intended to provide solutions, generally on very short notice (thereby severely limiting subsequent consideration of alternatives by planners and decisionmakers)—to widespread outbreaks of animal and plant diseases or similar exigencies; and (2) strategic or other long-range plans that purport to adopt for future application in the context of extensive APHIS programs a preferred course of action having the potential for significant environmental impact.

- General administrative (programmatic) examination of APHIS strategies and options for dealing with issues that have important implications for the maintenance and enhancement of environmental quality.

Programmatic environmental impact statements are useful not only when dealing with exigencies of substantial proportion, but also for any substantive APHIS program as a means of effectively and efficiently integrating environmental considerations, process, and values into program planning and service delivery efforts. The type of action for which a programmatic EIS might be appropriate could include an administrative proceeding undertaken to rationalize, prioritize, and streamline—particularly from the standpoint of competing policies (e.g., environmental policies and economic development)—essential activities related to program mission and functions. Consider, for example, the scoping notice for the Veterinary Services programmatic document that was published by APHIS in the **Federal Register** on October 9, 1992 (57 FR 46533–46534).

2. Actions Normally Requiring Environmental Assessments

The preparation of program EIS's—whether or not exigent circumstances may be involved—does not relieve APHIS from taking a "hard look" at refinements to, or site-specific implementation of, program alternatives that have not been "categorically excluded." The following classes of action, which normally do not have the potential to affect significantly the quality of the human environment, will be evaluated for NEPA purposes in the context of environmental assessments (EA's), some of which may be tiered to broader programmatic EIS's:

- Policymaking and rulemaking proposals that involve program plans, techniques, methods, or other activities likely to have a consequential effect on the physical or natural environment or that may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking.
- Development of program plans or similar nonexperimental approaches that seek to establish in more limited contexts impact-generating strategies, methods, or techniques as the means of dealing with animal and plant health issues within the purview of APHIS.

Included in this class would be "action plans" designed to address proposals to remedy specific problems, including plant pest infestations, animal diseases, depredating animals, and the like. Other planning activities for which EA's normally will be prepared include substantial APHIS involvement in the efforts of USDA's Forest Service, the Department of Interior's Bureau of Land Management, States, and Indian Tribes to eradicate or control plant pests, animal diseases, or depredating or nuisance species in various districts or regions.

• Site-specific implementation of action plans and approaches mentioned in the previous paragraph of this section, except where isolated activities, introductions, or applications, as developed more fully in the following subsection entitled "Categorically Excluded Actions," are contemplated.

There are some categories of APHIS action that, while susceptible to consideration in broad programmatic impact statements undertaken pursuant to NEPA, are usually identified with more resource-specific environmental mandates and may be the subject of periodic planning and review requirements. In the process of satisfying those requirements, all operational aspects of APHIS facilities, including storage and disposal of pesticides, chemicals, and laboratory wastes, will normally be thoroughly examined. But compliance with such planning and review requirements does not satisfy NEPA, which is applicable to "adoption of formal plans * * *" (40 CFR 1508.18(b)(2)).

The following classes of action may be examined in the context of specific environmental mandates other than NEPA, but will nevertheless be analyzed within an EA in order to facilitate the NEPA decision:

• Planning, design, and construction or acquisition of major new facilities or proposals to modify substantially existing facilities.

• Disposition of laboratory waste and other hazardous or toxic materials, except as provided under subsection 3 of this section.

Biotechnology and biological control activities within APHIS' oversight authority are conducted pursuant to permits or other authorizations that may include conditions to protect the environment, the granting of exemption from regulation, or a notification procedure. These activities normally will be examined in the context of EA's crafted to the permitting processes:

• Approval and issuance of permits for the release into the environment of genetically engineered organisms and products, and the release into the environment of exotic organisms.

There is one final category of action that fits within the classification of normally requiring an EA-research and testing. Not all research and testing, however, need be subjected to the EA process. Only where research or testing either creates a likelihood of harm to the quality of the human environment or represents an irretrievable commitment to the resulting technology will EA's normally be required:

• Research or testing that will be conducted outside of a laboratory or other containment area—field trials, for example—or that reaches a stage of development (e.g., formulation of pre-marketing strategies) that forecasts an irretrievable commitment to new products or technology.

3. Categorically Excluded Actions

The CEQ implementing regulations define the term "categorical exclusion" as "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * *." (40 CFR 1508.4). Environmental documents are not prepared for categorically excluded actions unless exceptional circumstances, as provided in subsection 4 below, are present. Indeed, CEQ "strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded" (CEQ Guidance Regarding NEPA Regulations, 48 FR 34265, July 28, 1983).

The Department has promulgated categorical exclusions of actions that are applicable to all departmental agencies whose procedures do not provide otherwise. Those categorical exclusions, codified at 7 CFR 1b.3a), are appropriate for APHIS. Other APHIS actions that qualify for categorical exclusion from the NEPA process are identified herein. Consistent with CEQ's directive, "broadly defined criteria" have been employed to "characterize types of actions that, based on APHIS' experience, do not cause significant environmental effects" (49 FR 34265, July 28, 1983).

Insofar as safeguarding environmental quality is concerned, the proper use of chemicals, pesticides, and other potentially hazardous or harmful substances, materials, and devices in the development and delivery of program goods and services is of the utmost concern to APHIS. But not every proposed use of potentially hazardous or harmful substances, materials, or devices will require application of the NEPA process. Experience suggests that the following category of actions, individually or cumulatively, will not have a significant effect on the human environment:

• Routine measures employed by the agency to pursue its mission and functions, such as identifications, inspections, surveys, sampling, testing, seizures, quarantines, removals, sanitizing, inoculations, and monitoring, including the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use (1) is localized in nonurban areas to individual parcels such as farms, ranches, or nurseries, or contained (and not aerially applied or administered) in urbanized areas to discrete sites that do not cater to the general public, and is limited in terms of quantity, i.e., low- or ultra-low volume or individualized dosages and remedies; (2) will not cause contaminants to enter water bodies, including wetlands; (3) does not adversely affect any federally protected species or critical habitat; and (4) is not persistent in the environment and does not cause bioaccumulation. All circumstances delineated above (insofar as they may pertain to a particular action) must be present for any such use to be categorically excluded from the NEPA process.

Examples of actions covered by this categorical exclusion include inoculation of discrete herds of livestock, or wildlife treatment strategies undertaken in contained areas (such as a zoo, an exhibition, or an aviary); pesticide treatments applied to infested plants on a homesite; and isolated (for example, along a highway) weed control efforts.

Research and small-scale testing activities represent another category of actions that will require application of the NEPA process only in very limited contexts—essentially those described in "Actions normally requiring EA's, Research and Testing." Other statutory requirements (those contained in the Federal Insecticide, Fungicide, and Rodenticide Act, for example) may be applicable to some research and testing activities regardless of how they may be classified for NEPA purposes in these procedures. Nevertheless, categorical exclusion from the NEPA process is

appropriate for the following described actions:

• Activities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects (internal or external) and to provide for lawful waste disposal.

Examples of actions covered by this categorical exclusion include: The development and/or production (including formulation, repackaging, movement, and distribution) of approved and/or licensed program material, devices, reagents, and biologics; research, testing, and development of animal repellents; and development and production of sterile insects.

The following additional categories of actions also qualify for categorical exclusion from the NEPA process:

• Routine precautionary measures, including identifications, inspections, surveys, testing, inoculating, and monitoring, of a limited scope and intensity that are designed to assure the proper care, protection, and treatment of animals.

• Rehabilitation of existing laboratories and other APHIS facilities, functional replacement of parts and equipment, and minor additions to such existing APHIS facilities.

• Agency actions including the issuance of permits, authorization to ship, or licensing involving a category of veterinary biological product which has been previously licensed, unless the product has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved. Also, the issuance of a license, permit, or authorization to ship for field testing products that had not been previously licensed that do not contain live microorganisms or that are used only for in vitro diagnostic testing.

4. Exceptions for Categorically Excluded Actions

Whenever the decisionmaker determines that an action listed in "Categorically Excluded Actions" may have the potential to affect "significantly" the quality of the "human environment," as those terms are defined at 40 CFR 1508.27 and 1508.14, respectively, an environmental impact statement or an EA will be prepared.

Early Planning for Applicants and Non-APHIS Entities (Section 372.6)

This section is designed to satisfy the directive in the CEQ implementing regulations that agencies make provision "for cases where actions are planned by private applicants or other * * * entities before Federal involvement * * *." (40 CFR 1501.2(d)). Written instructions or guidelines outlining what is needed to comply with environmental planning and documentation requirements for all prospective applicants cannot be included in these procedures. It is the intention of APHIS ultimately to identify environmental data needs for each major APHIS program that requires analysis under these procedures and to provide for those needs as an integral part of program standards and practices. Until that goal can be attained, however, each prospective applicant needing approval for proposed activities normally requiring environmental documentation is encouraged to contact, at the earliest opportunity, APHIS' program staff, which will then coordinate with the environmental unit to design an appropriate compliance procedure tailored to the needs of the particular proposal.

Consultation (Section 372.7)

This section encourages prospective applicants and others to contact APHIS program officials to determine what types of environmental analyses or documentation, if any, need to be prepared. Early consultation is not intended to satisfy the requirements of NEPA alone. NEPA documents should incorporate, to the fullest extent possible, surveys and studies required by other environmental statutes. Implementing regulations of other primary environmental statutes, such as the Endangered Species Act, also make provision for early consultation and resolution of major issues by prospective applicants. Only by taking full advantage of opportunities for early environmental planning can APHIS, entities it regulates, the public, and others, avoid excessive costs and undue administrative delays often associated with a poorly timed environmental analysis process.

Questions regarding these procedures and their applicability to particular planning and decisionmaking situations are inevitable. No procedure, regardless of how meticulously it may have been fashioned, can anticipate every contingency. For this reason, prospective applicants, and others who may have questions concerning these procedures, their applicability, meaning, or any other problem, should not hesitate to contact program officials and consult with the environmental unit at the earliest opportunity. Responses to all such questions will be provided as quickly as possible, in most cases within a single work day of securing any necessary factual information.

Major Planning and Decision Points and Public Involvement (Section 372.8)

This section is designed to satisfy the directives in the CEQ implementing regulations that agencies (1) designate "the major decision points for APHIS' principal programs likely to have a significant effect on the human environment and (assure) that the NEPA process corresponds with them" (40 CFR 1505.1(b) (1992)); and (2) "make diligent efforts to involve the public" in NEPA-related activities (40 CFR 1506.6).

Proposed § 372.5(a) of these procedures describes actions that normally require preparation of an EIS. The narrative explanation for that section emphasizes the desirability of adopting a broad programmatic approach to NEPA compliance that corresponds with APHIS' planning and service delivery efforts. Furthermore, it is in the planning stages of policy, program, or project development where the NEPA process can most effectively and efficiently be employed in the furtherance of the Act's "pollution prevention" purpose.

Like many agencies, APHIS makes ample use of long-range planning for policy development and formulation of program strategies. Most major policies and programs are already in place. Still NEPA is applicable to ongoing activities, including policies, programs, and projects, no less than it is to new ones (40 CFR 1508.18). Thus, for purposes of rationalizing and better coordinating existing policies and program strategies consistent with NEPA, a broad programmatic approach to environmental planning is logical.

Planning is often ad hoc in nature and specific points (especially the beginning point) can seldom be anticipated, at least with respect to particular events, times, or individuals. It may also be difficult to judge at what point in the planning process a "proposal" exists for NEPA purposes.[1] The NEPA process

[1] "Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for inclusion in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists (40 CFR 1508.23). *But see*, Executive Office of the President, Council on Environmental Quality, *Environmental Quality 1989* 21 (20th Annual Report, 1990) ("The impact statement was required to force the agencies to take

Continued

will be fully coordinated with APHIS planning. Specific decision points will be identified and communicated to the public in a notice of intent and in the context of the public scoping process.

A principal purpose of NEPA is to restore public confidence in the Federal Government's capacity to achieve important public purposes and objectives while at the same time maintaining and enhancing the quality of the environment. In furtherance of that purpose, both the Act and the CEQ implementing regulations require extensive public involvement in the preparation of necessary environmental documentation. APHIS is committed to an open and accessible NEPA process. There will be an early and open process for determining the scope of issues to be addressed in the EIS process.

A notice of intent to prepare an EIS will be published in the **Federal Register** as soon as it is determined that a proposed major Federal action has the potential to affect significantly the quality of the human environment. The notice may include a preliminary scope of environmental study. All public and other involvement in APHIS' EIS process, including the scoping process, commenting on draft documents, and participation in the preparation of any supplemental documents, will be pursuant to the CEQ implementing regulations.

Early public and other agency involvement is especially useful in the EA process where exigent circumstances (animal disease or plant pest outbreaks, for example) require rapid APHIS response. In such an event, any EA comment period would, of necessity, be extremely abbreviated. Opportunities for early public involvement in the EA process will be announced in the same fashion as the availability of EA's and findings of no significant impact, as specified in § 372.8(b)(3).

Section 1506.6 of the CEQ regulations requires agencies to involve the public and others in implementing their NEPA procedures which, according to CEQ, "includes public involvement in the preparation of EA's and findings of no significant impact. These are public "environmental documents" under § 1506.6(b), and, therefore, agencies must give public notice of their availability" (CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18037, March 23 1981). Notification of the availability of EA's and findings of no significant impact for proposed activities will be published in the **Federal Register**, unless it is determined that the effects of the action are primarily of local concern. Where the effects of the action are primarily of local concern, notice will normally be provided through publication of notice in a local or area newspaper of general circulation, or through the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Under this order, the State would act as a clearinghouse for review and public notice of the EA. *See*, the regulations implementing Executive Order 12372—Intergovernmental Review of Department of Agriculture Programs and Activities, 7 CFR part 3015, subpart V.

All environmental documents, comments received, and any underlying documents, including interagency correspondence where such correspondence transmits comments of Federal agencies on the environmental impact of proposals for which documents were prepared, will be made available to the public upon request. Materials to be made available will be provided without charge, to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including CEQ.

Processing and Use of Environmental Documents (Section 372.9)

This section would satisfy provisions of the CEQ regulations designed "to ensure that decisions are made in accordance with the policies and purposes of the Act" (40 CFR 1505.1).

EA's will be forwarded immediately upon completion to the decisionmaker for a determination of whether the proposed action may have significant effects on the human environment, and for the execution, as appropriate, of a finding of no significant impact or a notice of intent to prepare an EIS. At this time, the EA's will be made available consistent with the notification provisions of § 372.8 of these procedures.

Comments, if any, will be transmitted, together with any analyses and recommendations, to the APHIS decisionmaker who may then take appropriate action.

Changes to environmental assessments and findings of no significant impact which are prompted by comments, new information, or any other source, will normally be announced in the same manner as the notice of availability (except that all commenters will be mailed copies of changes directly) prior to implementing the proposed action or any alternative.

EIS's will be processed according to the CEQ regulations from inception (publication in the **Federal Register** of the notice of intent) to completion (publication of a final environmental impact statement or a supplement).

For rulemaking or adjudicatory proceedings, relevant environmental documents, comments, and responses will be part of the administrative record.

For all APHIS activity that is subject to the NEPA process, the environmental record, including comments and responses, will accompany proposals through the existing review process. The APHIS decisionmaking for each NEPA document will consider the range of alternatives discussed in environmental documents in reaching their determinations on the merits of proposed actions.

Supplementing Environmental Impact Statements (Section 372.10)

This section describes how supplemental EIS's are introduced into the administrative record.

The decision to prepare a supplemental EIS is similar to the decision to prepare an EIS in the first instance. As such, that decision turns on a myriad of factors. But once a decision to supplement an EIS is made, a notice of intent will be published in the **Federal Register**, which in effect serves to reopen the administrative record. The supplemental document will then be processed in the same fashion (exclusive of scoping) as a draft and a final statement, unless alternative procedures are approved by CEQ.

Executive Order 12866 and Regulatory Flexibility Act

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

These proposed procedures satisfy the requirement to implement CEQ's NEPA regulations and have been designed to reduce to a minimum the regulatory burden on small entities and all other individuals and organizations, public and private.

Under these circumstances, the Administrator of APHIS has determined that these procedures would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance

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the substantive provisions of the Act seriously and to consider the environmental policy directives of the Congress in the *formulation of agency plans and procedures*") (emphasis supplied).

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If these proposed procedures are adopted: (1) All State and local laws and regulations that are in conflict with these procedures will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

The National Environmental Policy Act

Section 372.5(b)(1) of these proposed procedures provides, in part, that an EA will normally be prepared for "rulemaking proposals that * * * may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking." See, *Illinois Commerce Comm'n* v. *ICC*, 848 F.2d 1246, 1256 (D.C. Cir. 1988) ("it is not at all apparent that a change in procedure alone will not affect the environment—the new procedure may, for example, lessen the opportunity for environmental groups to influence the agency's final decision"). An environmental assessment, which examines opportunities for public involvement in APHIS' environmental process, has been prepared. The environmental assessment concludes essentially that public involvement in APHIS' environmental planning and decisionmaking is consistent with NEPA requirements. In the circumstances, a finding of no significant impact is appropriate.

Copies of the environmental assessment may be obtained by writing the contact for this rulemaking provided under the section heading **FOR FURTHER INFORMATION CONTACT.** Comments are invited and should be submitted to this same contact on or before the comment due date for this proposed rulemaking.

Paperwork Reduction Act

These proposed procedures contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 372

Administrative practice and procedure, Environmental assessment, Environmental impact statement, National Environmental Policy Act.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 372, to read as follows:

PART 372—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Sec.
372.1 Purpose.
372.2 Designation of responsible APHIS official.
372.3 Information and assistance.
372.4 Definitions.
372.5 Classification of actions.
372.6 Early planning for applicants and non-APHIS entities.
372.7 Consultation.
372.8 Major planning and decision points and public involvement.
372.9 Processing and use of environmental documents.
372.10 Supplementing environmental impact statements.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 7 CFR parts 1b, 2.17, 2.51, 371.2, 371.2(m), 371.13(d), and 371.14(b).

§ 372.1 Purpose.

These procedures implement section 102(2) of the National Environmental Policy Act by assuring early and adequate consideration of environmental factors in Animal and Plant Health Inspection Service planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under the National Environmental Policy Act.

§ 372.2 Designation of responsible APHIS official.

The Administrator of APHIS, or an agency official to whom the Administrator may formally delegate the task, is responsible for overall review of APHIS' NEPA compliance.

§ 372.3 Information and assistance.

Information, including the status of studies, and the availability of reference materials, as well as the informal interpretations of APHIS' NEPA procedures and other forms of assistance, will be made available upon request to Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8565; FAX (301) 436–8669.

§ 372.4 Definitions.

The terminology set forth in the Council on Environmental Quality's (CEQ) implementing regulations at 40 CFR part 1508 is incorporated herein. In addition, the following terms as used in these procedures are defined as follows:

APHIS. The Animal and Plant Health Inspection Service (APHIS).

Decisionmaker. The agency official responsible for executing findings of no significant impact in the environmental assessment process and the record of decision in the environmental impact statement process.

Department. The United States Department of Agriculture (USDA).

Environmental unit. Environmental Analysis and Documentation, the analytical unit in the Biotechnology, Biologics, and Environmental Protection responsible for coordinating APHIS' compliance with the National Environmental Policy Act and other environmental laws and regulations.

§ 372.5 Classification of actions.

(a) *Actions normally requiring environmental impact statements.* An environmental impact statement will normally be prepared for the following types of actions:

(1) Administrative procedures that seek to establish broad-scale, significant, impact-generating strategies, methods, or techniques (e.g., treatment options of individual large-scale aerial application of chemicals) as the means of dealing with pervasive animal and plant health issues within the purview of APHIS. Examples of this category of actions include:

(i) Contingency or "emergency" response strategies (comprehensive in scope)—the design of which is intended to provide solutions, generally on very short notice, thereby severely limiting subsequent consideration of alternatives by planners and decisionmakers—to widespread outbreaks of animal and plant diseases or similar exigencies, and

(ii) Strategic or other long-range plans that purport to adopt for future application, in the context of extensive APHIS programs, a preferred course of action having the potential for significant environmental impact.

(2) General administrative (programmatic) examination of APHIS strategies and options for dealing with issues that have important implications for the maintenance and enhancement of environmental quality. An example of this category of actions is:

(1) An administrative proceeding undertaken to rationalize, prioritize, and streamline—particularly from the standpoint of competing policies (e.g., environmental policies and economic development)—essential activities related to program mission and functions.

(b) *Actions normally requiring environmental assessments.* Classes of actions identified below, which normally do not have the potential to

affect significantly the quality of the human environment, will, for NEPA purposes, be evaluated in the context of environmental assessments.

(1) Policymaking and rulemaking proposals that involve program plans, techniques, methods, or other activities likely to have a consequential effect on the physical or natural environment or that may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking.

(2) Development of program plans or similar nonexperimental approaches that seek to establish in more limited contexts impact-generating strategies, methods, or techniques as the means of dealing with animal and plant health issues within the purview of APHIS. Examples of this category of actions include:

(i) Proposals to remedy specific problems, including plant pest infestations, animal diseases, and depredating animals; and

(ii) Substantial APHIS involvement in the planning efforts of the USDA's Forest Service, the Department of the Interior's Bureau of Land Management, States, and Indian Tribes to eradicate or control plant pests, animal disease, or depredating animals.

(3) Site-specific implementation of action plans and approaches mentioned in paragraph (b)(2) of this section, except where isolated activities, introductions, or applications, as developed more fully in the following subsection entitled "Categorically Excluded Actions," are contemplated.

(4) Planning, design, and construction or acquisition of major new facilities, or proposals for substantial modifications to existing facilities.

(5) Disposition of laboratory waste and other hazardous or toxic materials, except as provided under paragraph (c) of this section.

(6) Approval and issuance of permits for:

(i) The release into the environment of genetically engineered organisms and products; and

(ii) The release into the environment of exotic organisms.

(7) Research or testing that:

(i) Will be conducted outside of a laboratory or other containment area (field trials, for example); or

(ii) Reaches a stage of development (e.g., formulation of pre-marketing strategies) that forecasts an irretrievable commitment to the resulting products or technology.

(c) *Categorically excluded actions.* The Department has promulgated categorical exclusions of actions that are applicable to all agencies whose procedures do no provide otherwise. Those categorical exclusions, codified at 7 CFR 1b.3(a), are adopted as entirely appropriate for APHIS. Other categories of APHIS actions which do not individually or cumulatively have a significant effect on the human environment and for which neither environmental assessment nor environmental impact statements will be prepared include:

(1)(i) Routine measures employed by the agency to pursue its mission and functions, such as identifications, inspections, surveys, sampling, testing, seizures, quarantines, removals, sanitizing, inoculations, and monitoring, including the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use:

(A) Is localized in nonurban areas to individual parcels such as farms, ranches, or nurseries, or contained (and not aerially applied or administered) in urbanized areas to discrete sites that do not cater to the general public, and is limited in terms of quantity, i.e., low- or ultra-low volume or individualized dosages and remedies;

(B) Will not cause contaminants to enter water bodies, including wetlands;

(C) Does not adversely affect any federally protected species or critical habitat; and

(D) Is not persistent in the environment and does not cause bioaccumulation.

(ii) *All* circumstances delineated in paragraph (c)(i) (A) through (D) of this section (insofar as they may pertain to a particular action) must be affirmed for any such use to be categorically excluded from the NEPA process. Examples of this category of actions include:

(A) Inoculation of discrete herds of livestock, or wildlife treatment strategies undertaken in contained areas (such as a zoo, an exhibition, or an aviary);

(B) Pesticide treatments applied to infested plants on a homesite without contamination of water; and

(C) Isolated (for example, along a highway) weed control efforts.

(2) Activities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects—internal or external—and to provide lawful waste disposal. Examples of this category of actions include:

(i) The development and/or production (including formulation, repackaging, movement, and distribution) of approved and/or licensed program material, devices, reagents, and biologics;

(ii) Research, testing, and development of animal repellents; and

(iii) Development and production of sterile insects.

(3) Routine precautionary measures, including identifications, inspections, surveys, testing, inoculating, and monitoring of a limited scope and intensity, designed to assure the proper care, protection, and treatment of animals.

(4) Rehabilitation of existing laboratories and other APHIS facilities, functional replacement of parts and equipment, and minor additions to such existing APHIS facilities.

(5) Agency actions, including the issuance of permits, authorization to ship, or licensing involving a category of veterinary biological product which has been previously licensed, unless the product has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved. Also, the issuance of a license, permit, or authorization to ship for field testing products that had not been previously licensed that do not contain live microorganisms or that are used only for in vitro diagnostic testing.

(d) *Exceptions for categorically excluded actions.* Whenever the decisionmaker determines that an action listed in paragraph (c) of this section may have the potential to affect "significantly" the quality of the "human environment," as those terms are defined at 40 CFR 1508.27 and 1508.14, respectively, an environmental impact statement or an environmental assessment will be prepared.

§ 372.6 Early planning for applicants and non-APHIS entities.

Each prospective applicant who anticipates the need for approval of proposed activities classified as normally requiring environmental documentation is encouraged to contact, at the earliest opportunity, APHIS' program staff, which will then coordinate with the environmental unit to design a streamlined compliance course tailored to the needs of the particular proposal.

§ 372.7 Consultation.

Prospective applicants are encouraged to contact APHIS program officials to determine what types of environmental

analyses or documentation, if any, need to be prepared. Early consultation is not intended to satisfy the requirements of NEPA alone. NEPA documents will incorporate, to the fullest extent possible, surveys and studies required by other environmental statutes, such as the Endangered Species Act.

§ 372.8 Major planning and decision points and public involvement.

(a) *Major planning and decision points.* The NEPA process will be fully coordinated with APHIS planning by APHIS' environmental unit in cooperation with program personnel. Specific decision points or milestones will be identified and communicated to the public and others in a notice of intent and in the context of the public scoping process.

(b) *Public involvement.* There will be an early and open process for determining the scope of issues to be addressed during environmental analysis.

(1) A notice of intent to prepare an environmental impact statement will be published in the **Federal Register** as soon as it is determined that a proposed major Federal action has the potential to affect significantly the quality of the human environment. The notice may include a preliminary scope of environmental study. All public and other involvement in APHIS' environmental impact statement process, including the scoping process, commenting on draft documents, and participation in the preparation of any supplemental documents, will be pursuant to CEQ's implementing regulations.

(2) Early public and other agency involvement in the environmental assessment process will be invited through announcements made available in the same fashion as the environmental assessments and findings of no significant impact.

(3) Notification of the availability of environmental assessments and findings of no significant impact for proposed activities will be published in the **Federal Register**, unless it is determined that the effects of the action are primarily of local concern. Where the effects of the action are primarily of local concern, notice will normally be provided through publication in a local or area newspaper of general circulation and/or the procedures implementing Executive Order 12372, "Intergovernmental Review of Federal Programs."

(4) All environmental documents, comments received, and any underlying documents, including interagency correspondence where such correspondence transmits comments of Federal agencies on the environmental impact of proposals for which documents were prepared, will be made available to the public upon request. Materials to be made available will be provided without charge, to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including CEQ.

§ 372.9 Processing and use of environmental documents.

(a) Environmental assessments will be forwarded immediately upon completion to the decisionmaker for a determination of whether the proposed action may have significant effects on the quality of the human environment, and for the execution, as appropriate, of a finding of no significant impact or a notice of intent to prepare an environmental impact statement. Simultaneously, the availability of environmental assessments will be announced by publishing a notice consistent with the notification provisions of § 372.8.

(b) Comments, if any, will be transmitted, together with any analyses and recommendations, to the APHIS decisionmaker who may then take appropriate action.

(c) Changes to environmental assessments and findings of no significant impact which are prompted by comments, new information, or any other source, will normally be announced in the same manner as the notice of availability (except that all commenters will be mailed copies of changes directly) prior to implementing the proposed action or any alternative.

(d) Environmental impact statements will be processed from inception (publication of the notice of intent) to completion (publication of a final environmental impact statement or a supplement) according to the Council on Environmental Quality implementing regulations.

(e) For rulemaking or adjudicatory proceedings, relevant environmental documents, comments, and responses will be a part of the administrative record.

(f) For all APHIS activity that is subject to the NEPA process, relevant environmental documents, comments, and responses will accompany proposals through the review process.

(g) The APHIS decisionmaker for each NEPA document will consider the range of alternatives discussed in environmental documents in reaching their determinations on the merits of proposed actions.

§ 372.10 Supplementing environmental impact statements.

Once a decision to supplement an environmental impact statement is made, a notice of intent will be published. The administrative record will thereafter be open. The supplemental document will then be processed in the same fashion (exclusive of scoping) as a draft and a final statement, unless alternative procedures are approved by CEQ, and will become part of the administrative record.

Done in Washington, DC, this 26th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13403 Filed 6–2–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 601, and 610

[Docket No. 94N–0066]

Review of General Biologics and Licensing Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Intent to review regulations; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is conducting a review of certain general biologics and licensing regulations and is requesting public comment on these regulations. This review is intended to identify regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision. This review is part of FDA's program to periodically review existing significant regulations. A request for comments on certain regulations for blood establishments and blood products will be published elsewhere in this issue of the **Federal Register**.

DATES: Written comments by August 17 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines or Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike,

Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 20, 1994 (59 FR 3043), FDA announced its plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. Under this plan, FDA is conducting a review of the general biologics and licensing regulations in 21 CFR parts 600, 601, and 610, and is requesting public comment on these regulations.

FDA is conducting a review of these regulations to determine whether they should be revised, rescinded, or continued without change. FDA is also evaluating whether to review other regulations applicable to biological products. This request for comments is intended to assist the Center for Biologics Evaluation and Research in identifying regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision to achieve their public health goals more effectively.

Under Executive Order 12866, the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is performing this review of these existing regulations to determine whether they are unnecessary as a result of changed circumstances, duplicative, or inappropriately burdensome. This action is also intended to incorporate the scientific advances in the field, to introduce, where appropriate, increased flexibility in the regulations, and to further insure the safety, purity, and potency of biologics products by updating the regulations. This document requests public comment on these regulations.

A request for comments on the blood establishments and blood products regulations in 21 CFR parts 606, 607, 610, 640, and 660 will be published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this request. 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. FDA requests that comments include the following information in the order shown: (1) The section affected in Title 21 of the CFR; (2) a description of the change suggested, including, if appropriate, suggested changes in the text of the regulation; (3) the rationale for the change or the problem to be addressed by the change; (4) any related regulations or guidance also affected by the suggested change; (5) any pertinent background information; and (6) whether the comment includes attachments. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 26, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13465 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 606, 607, 610, 640, and 660

[Docket No. 94N–0080]

Review of Regulations for Blood Establishments and Blood Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Intent to review regulations; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is conducting a review of certain regulations for blood establishments and blood products and is requesting public comment on these regulations. This review is intended to identify regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision. This review is part of FDA's program to periodically review existing significant regulations. A request for comments on certain general biologics and licensing regulations will be published elsewhere in this issue of the **Federal Register**.

DATES: Written comments by August 17, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson or Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 20, 1994 (59 FR 3043), FDA announced its plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. Under this plan, FDA is conducting a review of the regulations in 21 CFR parts 606, 607, 640, and 660, as well as the portions of 21 CFR part 610 that apply to blood and plasma collection establishments and blood and blood products; FDA is requesting public comment from interested parties on these regulations.

FDA is conducting a review of these regulations to determine whether they should be revised, rescinded, or continued without change. FDA is also evaluating whether to review other regulations applicable to blood products and establishments, including, but not limited to, 21 CFR parts 210 and 211. This request for comments is intended to assist the Center for Biologics Evaluation and Research in identifying regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision to achieve their public health goals more effectively.

Under Executive Order 12866, the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is performing a review of these regulations to determine whether they are unnecessary as the result of changed circumstances, duplicative, or inappropriately burdensome. This action is also intended to incorporate the scientific advances in the field, to introduce, where appropriate, increased flexibility in the regulations, and to further insure the safety, purity, and potency of blood and blood products by updating the blood regulations. This document requests information and comments on these regulations.

A request for comments on the general biologics and licensing regulations in 21 CFR parts 600, 601, and 610 will be published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this document. 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. FDA requests that comments include the following information in the order shown: (1) The section affected in Title 21 of the CFR; (2) a description of the suggested change, including, if appropriate, suggested changes in the text of the

regulation; (3) the rationale for the change or the problem to be addressed by the change; (4) any related regulations or guidance also affected by the suggested change; (5) any pertinent background information; and (6) whether the comment includes attachments. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 26, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13466 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Kentucky Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kentucky plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment deletes reference to the Kentucky Advisory Committee for Abandoned land Reclamation and establishes informal procedures for coordination of activities with the Rural Abandoned Mine Program (RAMP) administered by the U.S. Department of Agriculture, Soil Conservation Service (SCS). The amendment is intended to improve operational efficiency.

DATES: Written comments must be received on or before 4 p.m., E.D.T., on July 5, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on June 28, 1994. Requests to speak at the hearing must be received on or before 4 p.m., E.D.T., on June 20, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Kentucky plan, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., E.D.T., excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Plan

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective October 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

On May 18, 1982, the Secretary of the Interior approved the Kentucky plan. Background information on the plan including the Secretary's findings, the disposition of comments and a detailed explanation of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21435). Subsequent actions concerning the conditions of approval and amendments to the plan can be found at 30 CFR 917.21.

The Secretary adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a state may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures in 30 CFR 884.14 when approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated May 5, 1994 (Administrative Record No. K–64), Kentucky submitted a proposed amendment to revise procedures for coordinating with the RAMP, Indian, and other reclamation programs contained in Chapter 5 of the Kentucky Plan. This amendment was initiated in part due to a finding by the Kentucky Auditor of Public Accounts in the Statewide Audit for the period ended June 30, 1992, that the Division of Abandoned lands (DAL) was not operating in compliance with the Kentucky Plan. Chapter 5 of the plan establishes a "Kentucky Advisory Committee for Abandoned Mine Land Reclamation" to facilitate coordination of program activities with the RAMP program administered by the SCS. The Auditor determined that the processes established for the Advisory Committee to coordinate with RAMP were not being followed. The Advisory Committee had proven difficult to assemble, was cumbersome in operation, and had been disbanded. The proposed AMLR program amendment describes new, more informal coordination procedures. The annual meeting of the Kentucky Advisory Committee is to be replaced with an informal annual meeting between DAL and SCS staffs. During the annual meeting, SCS will present overall RAMP plans and goals, including scheduled reclamation sites, and results of past reclamation with emphasis on experience with various reclamation techniques. DAL will provide the SCS with its project proposals through the Kentucky State Clearinghouse process. SCS will provide DAL with copies of

RAMP documentation provided to OSM. Contacts between DAL and RAMP staff management will be initiated by either party on an as needed basis.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comment on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Kentucky plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T., on June 20, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–13504 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGDO1 94–037]

RIN 2115–AA97

Safety Zone; Boys Harbor Fireworks, East Hampton, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Three Mile Harbor, around the fireworks barges FBG 1 and FBG 2, which will be tied together and located approximately one mile south of Sammy's Beach, East Hampton, NY from 8:45 p.m. through 10 p.m. on July 16, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operating office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGDO1 94–037) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On March 12, 1994, the sponsor, Boys Harbor, Inc., New York, NY requested that a fireworks display be permitted in the port of East Hampton in the vicinity of Sammy's Beach, East Hampton, NY from 8:45 p.m. through 10 p.m. on July 16, 1994. The safety zone covers all waters of Three Mile Harbor within a 1200 foot radius of the fireworks barges FBG 1 and FBG 2, which will be tied together and located one mile south of Sammy's Beach, East Hampton, NY. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with this fireworks display which is occurring over Three Mile Harbor. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative. Good cause exists for providing a comment period of less than sixty days. Providing a sixty day comment period would be contrary to the public interest since the fireworks display is for public viewing and is scheduled to occur in conjunction with the Boys Harbor, Inc. summer fund-raiser to benefit disadvantaged boys from New York City.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects the economic impact to be minimal due to the limited duration of the fireworks display, the small size of the safety zone, the low level or non existent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal 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 proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–037 is added to read as follows:

§ 165.T01–037 Safety Zone; Boys Harbor Fireworks, East Hampton, NY.

(a) *Location.* The safety zone includes all waters of Three Mile Harbor within a 1200 foot radius of the barges FBG 1 and FBG 2, the fireworks launching platforms, which will be tied together and located approximately one mile south of Sammy's Beach, East Hampton, NY in approximate position 41°01′05″ N; 072°11′55″ W.

(b) *Effective date.* This section is effective from 8:45 p.m. through 10 p.m. on July 16, 1994 unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain date of July 17, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: May 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–13543 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AC51

Importation of Exotic Wild Birds to the United States; Amendment of Final Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On October 23, 1992 the Wild Bird Conservation Act (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This proposal amends the final rule published by the Fish and Wildlife Service (Service) on November 16, 1993 in the **Federal Register** (58 FR 60524), which implements the prohibitions stipulated in the WBCA and provides permit requirements and procedures for some allowed exemptions. As a result of a lawsuit filed on February 15, 1994 by the Humane Society of the United States and Defenders of Wildlife, and a resultant District Court Order that a portion of the contested regulation is invalid, the Service hereby proposes to amend 50 CFR 15.11 (b) and (c). Notice of the Court Order was published in the **Federal Register** on May 24, 1994. Consistent with that Court Order, the Service announced in that **Federal Register** notice that all exotic birds listed Appendix III of The Convention on International Trade in Endangered Species (CITES) are covered by the automatic import moratorium of the WBCA, regardless of their country of origin.

DATES: The Service will consider comments and information received by July 5, 1994 in formulating its decision on this proposed rule.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, 1849 C St. NW., 420 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U. S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This rule proposes to amend 50 CFR 15.11 (b) and (c)—Prohibitions, of the final rule published in the **Federal Register**, November 16, 1993 (58 FR 60524).

In the final rule of November 16, 1993, the Service interpreted that Appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in Appendix III. The Service noted that the listing of a species in Appendix III is a unilateral action by a particular CITES Party, thereby requiring CITES permits and implementation of CITES permit issuance requirements for that country only; when the species is found in countries that did not list it in Appendix III, only a certificate of origin is required, stating that it did not originate in the country that listed the species in Appendix III. Therefore, when the species is found in countries other than where listed in Appendix III, it is not subject to the same level of CITES controls, and indeed is only listed in the Appendices to assist the listing state in implementing its domestic legislation. Based on its understanding of the intent of Congress, the Service implemented a final rule whereby Appendix III species were subject to the *automatic* import prohibitions of the law, if they originated in the listing country. Otherwise, they would be subject to the *discretionary* prohibitions of the law.

The Humane Society of the United States and Defenders of Wildlife brought a civil action against the Secretary of the Interior in the United States District Court for the District of Columbia challenging that part of 50 CFR 15.11 which restricts the importation of certain Appendix III exotic birds. *Humane Society of the United States* v. *Babbitt*, Civ. No. 94–0296 (D.D.C., March 29, 1994). A hearing in the District Court took place on March 7, 1994. Plaintiffs argued that this provision, which was adopted through notice and comment procedures, violates the language of the Wild Bird Conservation Act of 1992. They sought relief to suspend or invalidate the following exception, contained in the final rule, to the prohibition on importation of birds listed in the Convention's appendices: "This paragraph (b) does not apply to an exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III" (50 CFR 15.11(b)(2)). Plaintiffs argued that this provision violates the plain language of the Act, which bars the importation of "any" species listed in "any" appendix to the Convention.

On March 29, 1994 U. S. District Judge Louis F. Oberdorfer found the contested regulation to be invalid. (This Court Order was discussed in a Notice in the **Federal Register** published on May 24, 1994.) Therefore, the Service hereby proposes to amend 50 CFR 15.11 (b) and (c) to comply with the Court Order. The Service proposes that all bird species listed in CITES Appendix III, (in addition to those in Appendices I or II) wherever found, cannot be imported into the U.S. unless they are either accompanied by an import permit issued pursuant to subpart C of 50 CFR part 15, or they are included in an approved list. On March 17, 1994 the Service published in the **Federal Register** (59 FR 12784) a proposed rule that would establish those approved lists.

Effects of the Rule

The Service has determined that this proposed rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). See DOI Departmental Manual, 516 DM 2, Appendix 1, ¶ 1.10. The regulations are procedural in nature, and the environmental effects are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. The permits and other administrative actions authorized under the WBCA and regulations will be subject to future NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This proposed rule has been determined not to be significant for purposes of Executive Order 12866. This action would not be expected to have significant taking implications for U.S. citizens, as per Executive Order 12630. Any effects on small entities (importers, shippers, etc.) would likely be minor, and would in any event, be the mandatory result of the district court ruling. Future proposed rule making will establish procedures for listing of species approved for import, which may reduce any effects on small entities. No reporting requirements would be added to existing regulations. Therefore, this revision would not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the proposed rule applies to importation of live exotic birds into the United States, it does not contain any Federalism impacts as described in Executive Order

12612. The Department has certified that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act

No new information collection requirement(s) are contained in this proposed rule for which OMB approval under 44 U.S.C. 3501 is necessary.

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, part 15 of Chapter I of title 50 of the Code of Federal Regulations is proposed to be revised as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 16 U.S.C. 4901–4916.

2. Section 15.11 of subpart B is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 15.11 Prohibitions.

* * * * *

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention that is not included in the approved list of species, pursuant to subpart D of this part, except that this paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention that is listed in the prohibited species list, pursuant to subpart F of this part.

* * * * *

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–13556 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, and 676

[Docket No. 940556–4156; I.D. 050494B]

RIN 0648–AE62

Limited Access Management of Federal Fisheries in and Off of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a moratorium for a temporary period on the entry of new vessels into the groundfish, crab, and halibut fisheries contained in proposed Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), proposed Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), proposed Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, and a proposed regulatory amendment affecting the Pacific halibut fishery in the waters in and off of Alaska. The moratorium is designed as a temporary measure that is necessary to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the objectives of the Council to promote conservation and management of groundfish, crab, and halibut resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be received at the following address by July 15, 1994.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of proposed Amendments 23 and 28 to the BSAI and GOA groundfish FMPs, Amendment 4 to the Bering Sea and Aleutian Islands Area king and Tanner crab FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the GOA and BSAI FMPs. The commercial harvest of king and Tanner crabs is managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the Council under the Magnuson Act. The FMP for the GOA groundfish fisheries is implemented by regulations at 50 CFR parts 672 and 676, and the FMP for the BSAI groundfish fisheries is implemented by regulations at 50 CFR parts 675 and 676. The FMP for the king and Tanner crab fisheries in the BSAI is implemented by regulations at 50 CFR part 671 and by Alaska Administrative Code regulations at title 5, chapters 34 and 35. For crab, BSAI means the Bering Sea and Aleutian Islands area as defined at § 671.2, and is a slightly different area than the BSAI management area as defined for groundfish at § 675.2. General regulations that also pertain to the U.S. groundfish and crab fisheries are set out at 50 CFR part 620.

The Council does not have a FMP for halibut. The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop for approval by the Secretary limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska. "Convention waters" means the maritime areas off the west coast of the United States and Canada as described

in Article I of the Convention (see 16 U.S.C. 773(d)). The Council acted under this authority in recommending its proposed moratorium for the halibut fishery. Regulations governing the harvesting of Pacific halibut are set out at 50 CFR parts 301 and 676.

In 1987, amid growing indications of excess harvesting capacity in the North Pacific groundfish fisheries, the Council adopted a "statement of commitment" to pursue alternative management measures that would achieve optimum yield through more rational fishing effort than exists with the current open access system. The Council identified ways to fulfill this commitment that included the development of an alternative management strategy for groundfish fisheries and the consideration of effort management in the crab and halibut fisheries.

Fishery management planning work continued in 1987 with the formation of the Future of Groundfish (FOG) Committee. The FOG Committee undertook a comprehensive examination of the groundfish, crab, and halibut fisheries off of Alaska. It concluded that problems of excess harvesting capacity and allocation conflicts would worsen under a continued open access system. The committee recommended a limited access management approach for these three fisheries.

In 1989 and 1990, the Council considered methods for implementing a moratorium that would limit access of new vessels into the groundfish, crab, and halibut fisheries. At its meeting in August 1990, the Council recommended that NMFS publish a notice in the **Federal Register** to: a. Inform the public of the Council's intention to develop measures to limit access; and b. announce a control date after which owners of vessels that had not previously participated would not be assured future access to these fisheries if a limited access system were implemented using that control date. The control date notice was published on September 5, 1990 (55 FR 36302), corrected on September 13, 1990 (55 FR 37729), and announced September 15, 1990, as the control date.

The control date notice stated that "due consideration" would be given to vessels that were under construction or under contract for purchase or construction and that had harvested or processed groundfish, crab, or halibut by January 15, 1992. In response to the delay of the 1992 trawl groundfish season from January 1, 1992, until January 20, 1992, the Council decided at its September 1991 meeting to change the final "due consideration" date to February 9, 1992.

The control date notice indicated that the Council was examining a change in the current open-access nature of the groundfish, crab, and halibut fisheries as part of a long-term solution to chronic conservation and management problems. The Council is continuing its study of long-term solutions to problems in these fisheries in its comprehensive management plan.

The moratorium is not expected to resolve the problem of excess capacity. However, the Council considers it necessary as an interim management measure to curtail increases in fishing capacity and provide temporary industry stability. While the moratorium is in effect, the Council can prepare and the Secretary can review and, if approved, implement a comprehensive management plan. The Council also determined that the moratorium would aid in the achievement of optimum yield by freezing the number of vessels allowed to participate in these fisheries and limiting increases in fishing capacity, both of which would increase economic benefits to fishermen and reduce the risk of overfishing.

Vessel Moratorium Program

The following section provides a summary of the provisions included in the motion, clarifications, and the Council's rationale for selecting those provisions. The subsequent section, "Implementation of the Moratorium," explains how the moratorium would be implemented if approved by the Secretary and includes changes proposed by NMFS to supplement the Council's proposed moratorium. The Council adopted a moratorium by approving a motion at its June 1992 meeting, with clarification in August 1992 and January 1993.

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendments and regulations. At this time, the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making final determinations, will take into account the data, views, and comments received during the comment period.

Provisions Contained in the Council's Motions

1. Moratorium Fisheries

The proposed moratorium fisheries would be: a. All groundfish fisheries managed under the GOA FMP; b. all groundfish fisheries managed under the BSAI FMP; c. all crab fisheries managed under the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI; and d. the commercial Pacific halibut fishery conducted in the waters in and off of the State of Alaska (State).

2. Affected Sectors of the Industry

The moratorium would apply only to catcher vessels and catcher-processor vessels participating in one or more of the moratorium fisheries. The Council designed the moratorium to stem the growth in harvesting capacity. It determined that restricting motherships, tendering vessels, and other support vessels would not accomplish this goal.

3. Qualifying Period

A vessel could be used to participate in any of the moratorium fisheries during the moratorium, if a reported landing in one of the moratorium fisheries was made from that vessel between January 1, 1980, and February 9, 1992. Such a vessel would be called a "qualifying vessel."

The Council determined that a date earlier than January 1, 1980, would have increased the size of the fleet eligible to participate during the moratorium period and placed a greater weight on past participation. A date later than January 1, 1980, would have restricted the size of the fleet eligible to participate during the moratorium period only to current or very recent participants.

The Council selected February 9, 1992, as the ending date for the qualifying period instead of the announced control date of September 15, 1990, with its "due consideration" requirements. Determining which vessels should be allowed to participate during the moratorium under "due consideration" would have required extensive review of documents submitted by the vessel owners and investigation as to whether the documents proved that vessels were qualifying vessels under the "due consideration" criteria. The Council deemed the submission and review of documents as too burdensome and expensive to implement. By selecting February 9, 1992, the Council included all vessels that were under "due consideration" without having to make any findings concerning construction or vessels under contract.

The qualifying period adopted by the Council would allow approximately 13,500 vessels to be eligible to participate in the moratorium fisheries during the moratorium. Substantially fewer vessels participate in any one year. In 1991, only about 4,500 vessels participated in the moratorium fisheries. NMFS particularly requests public comment on the effect of this qualifying period on the objectives of the moratorium.

4. Minimum Qualifying Poundage

The Council did not require landing of a specific minimum poundage from a moratorium fishery. A qualifying vessel would be one that made a reported landing from a moratorium fishery during the qualifying period. The Council reasoned that basing moratorium eligibility on landing a minimum amount from a moratorium fishery would become allocative among different segments of the industry and should be addressed in the comprehensive management plan.

5. Duration of Moratorium

The moratorium would be in effect for no longer than 3 years from the date of implementation. The proposed FMP amendment language states that the Council may extend the moratorium for up to 2 years if a permanent limited access program is imminent. This provides flexibility in the duration of the moratorium if progress is made on a permanent limited access program, but does not unnecessarily prolong the moratorium in the absence of further progress on the underlying overcapitalization problem. If no further action is taken concerning a limited access program during the moratorium, the moratorium would expire, because its justification would no longer be valid.

6. Crossovers

The Council determined that a qualifying vessel would be allowed to participate in all moratorium fisheries during the moratorium, even if the vessel had a reported landing from only one moratorium fishery. The Council reasoned that restrictions on the ability to crossover into other moratorium fisheries would constrain a fisherman's flexibility during the moratorium and would be allocative among different sectors of the industry. The Council determined that crossover restrictions would be addressed under the comprehensive management plan.

Crossovers during the moratorium could result in the entry of groundfish and halibut vessels into the crab fisheries, halibut vessels into the groundfish fisheries, and crab pot vessels into the groundfish fisheries. NMFS particularly requests public comment on crossovers, because crossover ability could have the potential to increase the harvesting capacity in the groundfish and crab fisheries, thwarting the goals of the moratorium.

7. Transfer of Moratorium Qualification

"Moratorium qualification" is proposed for all qualifying vessels. Moratorium qualification could be transferred if two requirements were satisfied. First, the vessel transferring moratorium qualification would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, if moratorium qualification were transferred to another vessel, a vessel length restriction would apply to the receiving vessel. The latter restriction, known as the "20 percent rule", would restrict vessels that are equal to, or less than, 125 ft (38.1 m) length overall (LOA) from increasing LOA by more than 20 percent, or 125 ft (38.1 m), whichever is less. Vessels over 125 ft (38.1 m) LOA would not be allowed to increase LOA during the moratorium. The LOA of a vessel, as defined at §§ 672.2 and 675.2, means the horizontal distance, rounded to the nearest foot (.33 m) between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. For example, the owner of a vessel that is 100 ft (30.5 m) LOA could transfer that vessel's moratorium qualification to a vessel that is 120 ft (36.6 m) LOA or less. The 100-ft (30.5 m) LOA vessel would not be able to participate in any of the moratorium fisheries for the duration of the moratorium because it does not have moratorium qualification. The 100-ft (30.5 m) vessel would be able to participate if it received transferred moratorium qualification from a vessel that was 83 ft (25.3 m) LOA or longer.

The Council did not select a date before which the transfer of moratorium qualification would not be allowed. Recognizing that a market in moratorium qualification had developed, the Council determined that moratorium qualification would rest with the qualifying vessel unless otherwise specified by legal agreement. The Council also determined that the transfer of moratorium qualification would not result in a transfer of the vessel's catch history.

8. Replacement of Vessel

Until the moratorium expires, the owner of a vessel with moratorium qualification would be able to replace that vessel with a vessel that does not have moratorium qualification as long as two requirements were satisfied. First, the replaced vessel would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium, unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, any increase in LOA through vessel replacement, sequential vessel replacements, or combined replacement and reconstruction would be limited by the 20 percent rule. The Council deemed the vessel replacement provision as necessary to facilitate the normal and on-going vessel replacement activities undertaken by vessel owners in response to financial, economic, and efficiency incentives.

9. Reconstruction of Vessel

A qualifying vessel that is reconstructed would have to comply with certain restrictions in LOA to remain eligible to participate in any of the moratorium fisheries. The proposed restrictions are: a. If vessel reconstruction were completed before June 24, 1992, any increase in LOA resulting from that reconstruction would be unrestricted; additional reconstruction would be allowed after June 24, 1992, subject to the 20 percent rule. b. If reconstruction were started before June 24, 1992, but not completed by that date, any increase in LOA resulting from that reconstruction would be unrestricted, but no more increases in LOA would be allowed during the moratorium. c. If reconstruction were started on or after June 24, 1992, any increase in LOA resulting from that reconstruction would be subject to the 20 percent rule.

The Council determined that it was important to allow increases in vessel LOA through reconstruction to provide for enhanced safety and stability, or to allow for the installation of processing equipment. However, the Council determined that reconstruction should not allow unlimited increases in LOA or the objectives of the moratorium would be compromised. The Council chose to limit LOA as a measure of fishing capacity, because it believed LOA was unambiguous, easily determined, and difficult to circumvent. To account equitably for actions already taken by vessel owners, restrictions on increases in LOA would be applicable only to changes that occurred after June 24,

1992, which was the day the Council adopted the 20 percent rule and the public became aware of this Council action through the June 24th Council meeting.

10. Replacement of Lost or Destroyed Vessel

Any qualifying vessel that is lost or destroyed during the moratorium could be replaced by a non-qualifying vessel. Any qualifying vessel that was lost or destroyed on or after January 1, 1989, until the date of moratorium implementation could be replaced with a non-qualifying vessel. However, the replacement vessel would be required to make a landing from a moratorium fishery within 2 years of the moratorium implementation date. A qualifying vessel lost or destroyed before January 1, 1989, could not be replaced. A vessel that replaced a lost or destroyed vessel would be subject to the 20 percent rule, and the replaced vessel would become a non-qualifying vessel unless that vessel subsequently received transferred moratorium qualification.

The Council included this provision to make allowance for a vessel lost or destroyed before and during the moratorium. The January 1, 1989, date was selected because the Council determined that an owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already obtained a replacement vessel.

11. Salvage of Lost or Destroyed Vessel

A qualifying vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain a qualifying vessel. The Council chose this date because the owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already have obtained a replacement vessel.

However, the Council created an exception for a qualifying vessel that was lost or destroyed before January 1, 1989. It could be salvaged and remain moratorium eligible if: a. The salvage operations began by June 24, 1992; and b. the salvaged vessel makes a landing from a moratorium fishery within 2 years of the date of implementation of the moratorium.

The provision to allow the salvage of a vessel before January 1, 1989, was added at the Council's August 1992 meeting based on public testimony received at that meeting. The Council chose June 24, 1992, because that was the date the Council approved the motion on the moratorium. The Council required such a salvaged vessel to make a landing within 2 years of the moratorium implementation date to ensure that the vessel was participating in a moratorium fishery.

12. Exemptions to the Moratorium

The Council included three exemptions to the moratorium. First, a vessel that participates in moratorium fisheries in the GOA that does not exceed 26 ft (7.9 m) LOA, and a vessel that participates in moratorium fisheries in the BSAI that does not exceed 32 ft (9.8 m) LOA would be exempt, providing such vessel lengths are not increased beyond these LOA limits. The Council provided these exemptions because, according to the EA/RIR/IRFA, vessels less than 36 ft (11 m) LOA in the BSAI and GOA were responsible for less than 1 percent of the moratorium fisheries landings and comprised approximately 65 percent of the fleet of qualified vessels in 1991. Eliminating the smaller vessels from the moratorium would lessen the burden on small vessel owners, while not compromising the goals of the moratorium. The limit was set at 26 ft (7.9 m) LOA or less in the GOA because vessels of this size represent the typical skiff fleet. In the BSAI, 32 ft (9.8 m) LOA represents the historical length restriction imposed on vessels participating in the Bristol Bay drift gillnet salmon fishery.

Second, a newly constructed vessel that was constructed pursuant to an approved Community Development Plan (CDP) under provisions of 50 CFR parts 675 and 676 would be exempted if: a. It were constructed solely for the purpose of furthering the goals of a CDP; b. it were a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements; and c. it were 125 ft (38.1 m) LOA or less. Such a vessel could participate in Community Development Quota (CDQ) and non-CDQ fisheries during the moratorium subject to other regulatory provisions. Such a vessel would lose its exempt status and would be restricted from participating in any of the moratorium fisheries, if it were transferred to a non-CDQ entity during the moratorium, unless the vessel subsequently received transferred moratorium qualification.

Third, a halibut or sablefish fixed gear vessel operating under the provisions of the Individual Fishery Quota (IFQ) program would be exempted from the vessel moratorium, as it affects directed halibut and sablefish operations. The Secretary approved the IFQ program for the halibut and sablefish fixed gear fishery on January 29, 1993 (58 FR 59375, November 9, 1993). A non-qualifying vessel that is harvesting IFQ halibut or sablefish would not be able to participate in any other directed moratorium fishery, but would be permitted to retain moratorium species other than halibut and sablefish in amounts up to 20 percent of the amount of halibut and sablefish on board.

13. Appeals

The Council's preferred alternative provides for an administrative appeal of an initial denial of a vessel permit or license. The intent of the Council, in recommending the opportunity for an administrative appeal, was to allow for an administrative solution to contested eligibility without the expense of a court proceeding. The Council determined that most appeals under the moratorium would be resolved through the examination of records. In the event that review of an appeal would require more than a review of the records and application of the regulations and would benefit from industry expertise, the Council recommended establishment of an adjudication or appeals board to review the appeals.

Implementation of the Moratorium

If approved by the Secretary, the moratorium would be effective for 3 years from its implementation date, as recommended by the Council. If approved, NMFS intends to implement the moratorium on January 1, 1995, through December 31, 1997.

Permit Requirements

Under the moratorium, NMFS is proposing that only a vessel that is issued a permit would be able to participate in the moratorium fisheries. Currently, an owner of a vessel harvesting halibut in the waters in and off of Alaska must obtain a vessel license from the IPHC, a groundfish harvesting, processing or support vessel in Federal waters off of Alaska must obtain a vessel permit from NMFS, and a king or Tanner crab harvesting, processing, or support vessel in Federal and State waters must obtain a vessel permit from the State.

Under the moratorium, a vessel owner would continue to apply to the IPHC for a halibut vessel license, and to NMFS for a groundfish vessel permit. Since the State does not have authority to impose a moratorium on vessels, NMFS also would require a crab harvesting, processing, or support vessel participating in the crab fisheries in the Federal waters of the BSAI to obtain a Federal vessel permit. The State would continue to require a State vessel permit to participate in crab fisheries in State waters, and the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI would continue to defer much of

the management of the fishery to the State.

An owner of a support vessel that intends to participate in the moratorium fisheries from January 1, 1995, through December 31, 1997, would have to apply for and receive a permit, but would not be subject to the moratorium eligibility requirements.

Permits and licenses issued under the moratorium would remain harvesting privileges and the Secretary would have the authority to amend or revoke the moratorium and any harvesting privileges thereunder, if required for conservation of the resources.

Eligibility Requirements

As previously discussed, a vessel would be eligible to receive a permit or license if it has moratorium qualification and if its LOA does not exceed the applicable length restrictions. NMFS is proposing to implement the Council's length increase restrictions, or the 20 percent rule, by requiring the LOA of a vessel to be no greater than 1.2 times the "original qualifying length" of the qualifying vessel. This calculation results in a "maximum LOA" that the vessel may not exceed during the moratorium. The original qualifying length would be the registered length of a qualifying vessel that appears on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation, or State documentation if the vessel is not required to have U.S. Coast Guard Documentation. For vessels with an original qualifying length of less than or equal to 104 ft (31.7 m), the maximum LOA would be 1.2 times the original qualifying length. For vessels with an original qualifying length greater than 104 ft (31.7 m) but less than or equal to 125 ft (38.1 m), the maximum LOA would be 125 ft (38.1 m). For vessels with an original qualifying length greater than 125 ft (38.1 m), the maximum LOA would be the original qualifying length. Vessels that satisfy both moratorium conditions would be "eligible vessels."

Vessel Reconstruction

Vessel reconstruction means an adjustment in the LOA of a qualifying vessel. NMFS proposes that the maximum LOA for a qualifying vessel that is 125 ft (38.1 m) LOA or less could be adjusted through reconstruction and the vessel would remain an eligible vessel under the following three conditions. First, if vessel reconstruction were completed on or before June 24, 1992, the LOA of the reconstructed vessel would become the new original qualifying length of the vessel. The new original qualifying length then would be used to calculate maximum LOA as described above under "Eligibility Requirements." Second, if vessel reconstruction were started before June 24, 1992, but not finished by that date, the LOA of the reconstructed vessel would become the new maximum LOA for the vessel. No further increase in LOA would be permitted during the moratorium. Third, if vessel reconstruction were started on or after June 24, 1992, the maximum LOA would not be adjusted during the moratorium, and any increases in LOA as a result of reconstruction would have to be less than or equal to the maximum LOA for the vessel. Vessel reconstruction would begin and end with the start and completion of the physical modification of the vessel. The determination of any adjustment in maximum LOA for reconstructed vessels would have to be approved by NMFS and be based on documentation supplied to NMFS that verifies the beginning and ending dates of vessel reconstruction. NMFS proposes that acceptable documentation of the beginning and ending dates of reconstruction would be limited to a notarized affidavit signed by the vessel owner and the owner/manager of the shipyard that specifies the beginning and ending dates of the reconstruction. NMFS particularly requests comments from the public on this proposed method for documenting the beginning and ending dates of vessel reconstruction.

Transfer of Moratorium Qualification

Moratorium qualification would be transferable from a vessel to another vessel or person, or from a person to another person or vessel. Any transfer of moratorium qualification by a vessel would make that vessel ineligible. For the purposes of implementing the moratorium, vessel replacement would be considered a transferral of moratorium qualification. Additionally, to establish transfer of moratorium qualification by legal agreement, NMFS proposes that a written contract must exist that documents the transfer and includes certain information as proposed in § 676.3(b)(1)(i).

NMFS would determine the maximum LOA for each qualifying vessel prior to the implementation of the moratorium. When the moratorium qualification of a qualifying vessel is transferred to another vessel or person, the maximum LOA of the qualifying vessel also would be transferred to the vessel or person receiving the moratorium qualification. Maximum LOA would remain attached to a specific moratorium qualification regardless of how many times that moratorium qualification was transferred. If moratorium qualification is transferred to a smaller vessel, that smaller vessel would retain the maximum LOA of the qualifying vessel.

Definition of Vessel Length

The Council intended that the limitations on increases in vessel length be based on the LOA of the vessel. The current LOA of a vessel can be measured as it is defined in §§ 672.2 and 675.2, but complete records of the historical LOA of vessels during the qualifying period are not available for calculating the maximum LOA as proposed by NMFS. Various methods for measuring vessel length were used on vessel permit and license forms during the qualifying period by NMFS, the State, IPHC, and the U.S. Coast Guard (USCG). For example, several different methods of measuring "registered length" were used, and an undefined vessel "length" was used in addition to LOA. NMFS proposes, for purposes of the moratorium, that historical LOA equal the registered length listed on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation to provide a single source of data for most original qualifying vessels. A vessel under 32 ft (9.8 m) LOA that does not have USCG documentation may use vessel length as specified in State registration.

A difficulty with the NMFS proposal is that the USCG registered length is sometimes less than actual LOA. This may cause a problem for a vessel that already has increased its length using actual historical LOA according to the Council's recommendations, resulting in an increase that exceeds the maximum LOA. Consequently, the vessel would be an ineligible vessel. Also, a vessel that has not yet increased its length according to the Council's 20 percent limit would not be able to increase its length as much as would be allowed if historical LOA were used instead of historical registered length. NMFS particularly requests comment from the public on this subject.

Replacement or Salvage of a Lost or Destroyed Vessel

If a vessel owner submits an application to NMFS for the replacement or salvage of a lost or destroyed vessel, NMFS proposes to determine whether a vessel is lost or destroyed by consulting the U.S. Coast Guard Report of Marine Casualty, form 2692. If NMFS determines that a vessel is lost or destroyed, a vessel owner

would then be required to submit documentation that satisfies the Council's requirements for eligibility of a replacement or salvaged vessel. These proposed information requirements are specified in § 676.3(b)(3)(iii).

Permit Issuance Procedure

For purposes of the moratorium, NMFS would prepare a database that contains each vessel that made a qualifying landing during the qualifying period. The database also would include information concerning ownership and vessel length derived from permit and license data. The database would be used by NMFS for determining eligible vessels. NMFS proposes the following vessel permit and license issuance procedure.

Groundfish

A vessel owner that intends to harvest groundfish in the GOA and BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Director of the Alaska Region, NMFS (Regional Director), a written application for a groundfish vessel permit. An applicant would be issued a permit if: a. The vessel owner submitted a completed vessel permit application; b. the vessel made a qualifying landing during the qualifying period or submitted a completed moratorium qualification transfer application with the vessel permit application; and c. the LOA of the vessel did not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a completed vessel reconstruction application with the vessel permit application. All permits issued by NMFS would list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to NMFS for a groundfish vessel permit, and NMFS determines that the vessel is an ineligible vessel, the vessel owner would be notified in writing by NMFS that a vessel permit would not be issued. The applicant could appeal the initial decision within 45 days of issuance of the written notification according to the appeal procedures described below. Although each GOA and BSAI groundfish vessel would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Crab

A vessel owner that intends to fish for king and Tanner crab in the Federal waters of the BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a Federal crab vessel permit in addition to any permit required by the State. The application and issuance procedure, and the appeals procedure for crab vessel permits would be the same as for groundfish. Although all vessels operating in crab fisheries in the BSAI would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Halibut

A vessel owner that intends to harvest halibut from January 1, 1995, through December 31, 1997, in the waters in and off Alaska would have to apply for a vessel license from the IPHC. Upon receipt of a written vessel license application, the IPHC would compare the information submitted by the applicant with the NMFS database of eligible vessels. An unrestricted vessel license would be issued if: a. The vessel owner were to submit a completed vessel license application to the IPHC; b. the vessel made a qualifying landing during the qualifying period; and c. the LOA of the vessel did not exceed the maximum LOA. Each unrestricted vessel license issued by the IPHC would list the maximum LOA applicable for the vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to the IPHC for a halibut vessel license but the information on the application does not correspond to the information in the NMFS database, the IPHC would issue a restricted vessel license, applicable only for IPHC management areas 2A or 2B which are in and off British Columbia, Canada, and the States of California, Oregon, and Washington. At this point, the vessel owner would have the option of submitting additional written information regarding eligibility to NMFS within 45 days of issuance of the restricted vessel license. NMFS would review the additional information and issue a written decision as to whether an unrestricted halibut license would be issued. If NMFS initially determines that the vessel is eligible, NMFS would amend the database and inform the IPHC that the vessel is eligible and an unrestricted vessel license could be issued to the vessel owner. If NMFS initially determines that a restricted halibut license would be issued, the applicant may appeal the decision to the Regional Director within 45 days of issuance of the written notification from NMFS according to the appeal procedures described below.

Although vessels operating in the halibut fisheries in the waters in and off of Alaska would have to apply for and obtain a vessel license from the IPHC, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Vessels Used in the IFQ Sablefish and Halibut Fixed Gear Fisheries

A vessel operating under the provisions of the halibut and sablefish fixed gear IFQ program would be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. To implement this exemption, an owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a groundfish and crab vessel permit. A vessel permit would be issued if the vessel owner submits a completed application to NMFS as required by §§ 671.4, 672.4, or § 675.4. The type of permit issued would be based on the eligibility of the vessel under the moratorium.

An eligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of other moratorium species subject to applicable directed fishing standards.

An ineligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit would not be able to retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents in excess of 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

Letter of Authorization

If a vessel owner submits a complete application for a vessel permit or license, and NMFS preliminarily determines that a vessel is an ineligible vessel, NMFS would send a Letter of Authorization to a vessel owner authorizing a vessel to harvest moratorium species. A Letter of Authorization would allow a vessel owner who applies for a moratorium vessel permit or license to continue operating his vessel until NMFS makes a decision regarding its moratorium qualification.

NMFS would send a Letter of Authorization to the vessel owner within 30 days of receipt of the application, if NMFS has not issued a written initial decision to the vessel owner regarding his vessel's qualification. This Letter of Authorization would be in effect until superseded or rescinded by the Regional Director.

If a vessel owner files a notice of appeal with the Regional Director, NMFS would send a Letter of Authorization to the vessel owner within 30 days of the filing of the appeal with NMFS, pending issuance of a written final decision to the vessel owner on the appeal. This Letter of Authorization would expire 30 days after the Regional Director issues a written final decision on the appeal.

Appeals Procedure

NMFS proposes the following appeals procedure to implement the Council's appeal provisions. A vessel owner may appeal the initial denial of a groundfish and crab vessel permit, the issuance of a restricted halibut vessel license, or the issuance of a restricted groundfish and crab vessel permit to the Regional Director within 45 days of issuance of written notice from NMFS or the IPHC. The Regional Director would decide the appeal on a review of the records submitted, and issue a written decision on the appeal. If the Regional Director were to determine that in deciding the appeal, his decision would benefit from industry input, the Regional Director would forward the appeal to the Appeals Board. NMFS proposes that the Appeals Board would be a committee of the Council comprised of three appointed Council Advisory Panel members. The Appeals Board would meet publicly to discuss the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director would consider the recommendation and issue a written decision on the appeal. The Regional Director's decision would constitute the final agency action upon which the applicant would be able to file suit in U.S. District Court.

Notice of a proposed rule that would govern appeals of determinations made for the IFQ program was published on February 9, 1994 (59 FR 5979). Public comment is particularly requested on using the same appeals procedure for the IFQ and moratorium programs.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule, if adopted, could have a significant economic impact on a substantial number of small entities. Based on the EA/RIR/IRFA for the moratorium, total participation in the moratorium fisheries for a given year is influenced by the annual rate of entrance and exit of vessels. Although new entrants averaged nearly 900 vessels annually over the period from 1977 through 1991, total participation increased only 180 vessels per year, on average, because 500 to 1,000 vessels exited the fisheries annually.

Vessel participation data for 1992 have become available since this analysis was performed. The source of these data are the State of Alaska fish ticket, NMFS groundfish vessel permit, weekly production report, and catch estimate databases.

In 1991, 2,227 vessels fished in Alaska Federal groundfish fisheries, and in 1992, 2,341 vessels fished, for an increase in 1992 of 114 vessels. Approximately half (46 vessels) of this increase is due to vessels less than 60 ft (18.3 m) LOA. Such vessels normally do not make a significant contribution to the overall landings of groundfish. In addition, vessels less than 26 ft (7.9 m) LOA in the GOA and those less than 32 ft (9.8 m) LOA in the BSAI area would be exempt from the moratorium. After subtracting such small vessels and considering only those newly permitted vessels that made recorded groundfish landings in 1992, only about 27 vessels apparently entered the groundfish fishery in 1992 for the first time, and would not be eligible to fish under the moratorium. With respect to halibut, about 156 "new" vessels made landings for the first time in 1992 (some of these had groundfish and crab landings records also). With respect to BSAI crab, eight "new" vessels made landings for the first time in 1992. Therefore, a total of about 191 vessels apparently entered the groundfish, halibut, and crab fisheries for the first time in 1992 and may not be eligible for a license if the moratorium is approved and implemented as proposed.

The number of "new" vessels that entered these fisheries in 1993 and 1994 is unknown because individual vessel catch data are still preliminary. Assuming that roughly the same number of "new" vessels entered these fisheries in 1993 and 1994 as entered in 1992 probably is unrealistic. The Council's moratorium decision occurred midway through 1992. Most fishermen decide whether to enter a fishery at the beginning of the year. Public knowledge of the Council's action after June 1992 probably had a negative effect on a decision to enter a "new" vessel in 1993 or 1994. According to the NMFS vessel permit database, about 447 Federal groundfish vessel permits were issued between February 9, 1992, and March 21, 1994, that had never before obtained a groundfish vessel permit. However, the majority of these "new" vessel permits likely were issued to halibut longline vessels, which would be exempt from the moratorium when the halibut IFQ program is fully implemented in 1995. In addition, some unknown number of these "new" groundfish vessel permits were never used to actually harvest and land groundfish, and others were issued to small vessels that would be exempt from the moratorium. For the reasons described above, the number is likely more than 35, but less than 100, based on the available data and knowledge of the fisheries. A copy of the EA/RIR/IRFA may be obtained (see ADDRESSES).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that have been submitted to the Office of Management and Budget for approval. Public reporting burden for each year of this collection is estimated to average 0.5 hours per response for completing each of the six information collection requests, except for the crab permit application, which is .33 burden hours per response. The six information collection requests and the estimated number of annual responses are: 1. Crab vessel permit applications, 400; 2. applications for transfer of moratorium qualification, 715; 3. applications for vessel reconstruction, 143; 4. transfer of a lost or destroyed vessel's moratorium qualification, 36; 5. salvage of lost or destroyed vessels, 36; and 6. applications for appeal, 358. These reporting burdens include the time for reviewing the instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

This proposed rule is exempt from prepublication review for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 671, 672, 675, and 676

Fisheries, Recordkeeping and reporting requirements.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 671, 672, 675, and 676 are proposed to be amended to read as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows:

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

2. Section 671.2 is amended by adding the definitions for "King crab" and "Tanner crab" as follows:

§ 671.2 Definitions.

* * * * *

King crab means red king crab, *Paralithodes camtschatica;* blue king crab, *P. platypus;* or brown (or golden) king crab, *Lithodes aequispina.*

* * * * *

Tanner crab means *Chionoecetes bairdi;* or snow crab, *C. opilio.*

3. Subpart A is amended by adding § 671.3 to read as follows:

§ 671.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR 611.93.

(b) *King and Tanner crab.* Regulations governing the conservation and management of king and Tanner crab are also found in Alaska Administrative Code regulations at Title 5, Chapters 34 and 35.

(c) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(d) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR parts 620, 672, 675, and 676.

(e) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(f) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

4. Subpart A is amended by adding § 671.4 to read as follows:

§ 671.4 Permits.

This section is effective [DATE 30 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], through December 31, 1997, unless otherwise specified.

(a) *General*—(1) Effective from January 1, 1995, through December 31, 1997. No vessel of the United States may fish for king or Tanner crab in the Bering Sea and Aleutian Islands Area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits for 1995, 1996, and 1997.* Permits issued under this section shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

(b) *Application.* A vessel owner may obtain a vessel permit required under paragraph (a) of this section by submitting a written application to the Regional Director containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the vessel is to be used in crab harvesting, in which case the type of fishing gear to be used must be specified; or for processing or support operations, including the receipt of crab from U.S. vessels at sea; and

(10) The signature of the applicant.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, and subpart A of 50 CFR part 676, upon receipt of a properly completed application, the Regional Director will issue a permit to the vessel. An application that includes the above information will be deemed complete.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* A vessel owner that has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) or subpart A of part 676.

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried aboard the vessel whenever the vessel is fishing for crab. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

5. The authority citation for 50 CFR part 672 continues to read as follows:

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

6. Section 672.3(f) is added to read as follows:

§ 672.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* This paragraph (f) is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997 Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

7. Section 672.4(a) is revised to read as follows:

§ 672.4 Permits.

(a) *General.* (1) No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits for 1995, 1996, and 1997.* This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall

be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA

8. The authority citation for 50 CFR part 675 continues to read as follows:

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

9. Section 675.3(f) is added to read as follows:

§ 675.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* This paragraph (f) is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997. Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

10. Section 675.4(a) is revised to read as follows:

§ 675.4 Permits.

(a) *General.* (1) No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits During 1995, 1996, and 1997.* This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

11. The authority citation for part 676 continues to read as follows:

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

12. Subpart A is amended by adding §§ 676.1 through 676.7 to read as follows:

Subpart A—Moratorium on Entry

Sec.

676.1 Purpose and scope.
676.2 Definitions.
676.3 Issuance of vessel permits.
676.4 Exemptions.
676.5 Permit issuance procedure.
676.6 Appeals.
676.7 Prohibitions.

§ 676.1 Purpose and scope.

This section is effective from [date 30 days after date of publication of the final rule in the **Federal Register**], through December 31, 1997.

(a) Subpart A of this part implements the moratorium program developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subpart A govern:

(1) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for groundfish in that portion of the Gulf of Alaska and Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority;

(2) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for king or Tanner crab in that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority; and

(3) The issuance of International Pacific Halibut Commission vessel licenses for regulating participation in the commercial fisheries for Pacific halibut in Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska.

§ 676.2 Definitions.

This section is effective from [date 30 days after date of publication of the final rule in the **Federal Register**], through December 31, 1997. In addition to the definitions in the Magnuson Act and in 50 CFR parts 301, 620, 671, 672, and 675, the terms in subpart A of 50 CFR part 676 have the following meanings:

Appeals Board means a North Pacific Fishery Management Council adjudication board comprised of three North Pacific Fishery Management Council Advisory Panel members appointed by the North Pacific Fishery Management Council.

Eligible vessel means a vessel that has moratorium qualification and has an LOA that is less than or equal to the maximum LOA.

Harvest or harvesting means any activity, other than scientific research conducted by a scientific research vessel, that involves the catching or taking of fish, the attempted catching or taking of fish, or any other activity that can reasonably be expected to result in the catching or taking of fish.

Legal landing means any amount of a moratorium species that was harvested and landed in compliance with State and Federal regulations in existence at the time of the landing.

Letter of authorization means a letter from NMFS to a vessel owner authorizing a vessel to make a legal landing of any moratorium species during the moratorium pending an initial written decision by NMFS on a vessel permit or license application or pending a final written decision by the Regional Director on an appeal.

LOA means length overall as defined at §§ 672.2 and 675.2.

Lost or destroyed vessel means a vessel that has been sunk at sea or been destroyed by fire or other type of physical damage and is listed on the U.S. Coast Guard Report of Marine Casualty, form 2692.

Maximum LOA means a length overall assigned by NMFS for each original qualifying vessel that represents the greatest LOA to which a vessel may increase and continue to participate in the moratorium fisheries during the moratorium. For a vessel with an original qualifying length less than or equal to 104 feet (31.7 meters), the maximum LOA is 1.2 times the original qualifying length. For a vessel with an original qualifying length greater than 104 feet (31.7 meters) and equal to or less than 125 feet (38.1 meters), the maximum LOA is 125 feet (38.1 meters). For a vessel with an original qualifying length greater than 125 feet (38.1 meters), the maximum LOA is the original qualifying length.

Moratorium qualification means the privilege of a vessel to fish for moratorium species during the moratorium if the vessel made a qualifying landing. Moratorium qualification may be transferred to another vessel or person.

Moratorium species means Pacific halibut harvested from Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska; groundfish species harvested from the Gulf of Alaska management area as specified in accordance with 50 CFR 672.20(c)(1); groundfish species harvested from the Bering Sea and Aleutian Islands management area as specified in accordance with 50 CFR 675.20(a)(7); and king or Tanner crab harvested from the Bering Sea and Aleutian Islands area.

Original qualifying length means the registered length of an original qualifying vessel that appears on the most recently submitted application for U.S. Coast Guard Certificate of Documentation prior to June 24, 1992, or State of Alaska documentation if the vessel is not required to and does not have a U.S. Coast Guard Certificate of Documentation.

Original qualifying vessel means a U.S. vessel that made a qualifying landing.

Person means any individual who is a citizen of the United States or any corporation, partnership, association, or

other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Qualifying landing means the legal landing of any amount of a moratorium species during the qualifying period.

Qualifying period means the period of time from January 1, 1980, through February 9, 1992.

Vessel reconstruction means an adjustment in the LOA of a vessel. Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel.

§ 676.3 Issuance of vessel permits.

This section is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997.

(a) *Applicability.* Except for the exemptions to the vessel moratorium listed in § 676.4, the moratorium applies to all catcher vessels and catcher/processor vessels that apply for the following permits or licenses:

(1) To commercially harvest king or Tanner crab in the Bering Sea and Aleutian Islands area under 50 CFR 671.4;

(2) To harvest groundfish of the Gulf of Alaska management area under 50 CFR 672.4;

(3) To harvest groundfish of the Bering Sea and Aleutian Islands management area under 50 CFR 675.4; and

(4) To commercially harvest Pacific halibut from Convention waters that are in and off the State of Alaska under 50 CFR part 301.

(b) *Eligibility criteria.* In order for a vessel to receive a vessel permit or license during the moratorium, the vessel must have made a qualifying landing, and the maximum LOA for the vessel must be greater than or equal to the LOA of the vessel.

(1) *Transfer of moratorium qualification.* Moratorium qualification may be transferred from a vessel to another vessel or to a person, or from a person to another person or to a vessel. The maximum LOA for the vessel must be transferred with the moratorium qualification. The transfer of moratorium qualification will be authorized under the following conditions:

(i) The owner of the moratorium qualification must submit a written application to NMFS for the transfer of moratorium qualification that must include a copy of a written contract that contains the following information:

(A) Names and addresses of all persons taking part in the transfer;

(B) Vessel names, U.S. Coast Guard identification numbers of any vessels taking part in the transfer, and the LOA of all vessels taking part in the transfer;

(C) A statement describing the transfer of the moratorium qualification; and

(D) Signatures and dates when signed by all persons taking part in the transfer.

(ii) The vessel transferring moratorium qualification must surrender to NMFS all valid permits or licenses to harvest moratorium species and the vessel must not harvest any moratorium species for the remainder of the moratorium unless the vessel subsequently receives moratorium qualification from another vessel;

(iii) NMFS must give written approval to a vessel owner of any transfer of the moratorium qualification prior to receipt by the vessel of moratorium qualification and any harvesting of moratorium species.

(iv) NMFS must give written approval to a person that has received the transfer of moratorium qualification before the transfer will be authorized.

(2) *Adjustment to maximum LOA through reconstruction.* The maximum LOA for a vessel may be adjusted through vessel reconstruction under the following conditions:

(i) If vessel reconstruction was completed before June 24, 1992, the LOA of the reconstructed vessel will be the new original qualifying length for the vessel, from which a new maximum LOA will be calculated for the reconstructed vessel.

(ii) If vessel reconstruction began before June 24, 1992, but was not completed by that date, the LOA resulting from the reconstruction is the new maximum LOA and no further adjustment in maximum LOA is permitted for the duration of the moratorium.

(iii) If vessel reconstruction was started on or after June 24, 1992, the maximum LOA may not be adjusted.

(iv) Maximum LOA for vessels over 125 feet (38.1 meters) LOA cannot be increased through reconstruction.

(v) NMFS must give written approval to the vessel owner of an adjustment in the maximum LOA due to vessel reconstruction. A vessel owner must receive written approval and a permit or license with the new maximum LOA prior to harvesting any moratorium species. In order to adjust the maximum LOA for a vessel, the vessel owner must submit to NMFS an application for adjustment of the maximum LOA that includes the following information:

(A) Name and address of vessel owner(s);

(B) Vessel name and U.S. Coast Guard vessel identification number;

(C) Written contracts or written agreements with the boatyard or shipyard concerning the vessel reconstruction;

(D) An affidavit signed by the vessel owner(s) and the owner/manager of the company performing the vessel reconstruction that states the beginning and ending dates of reconstruction; and

(E) An affidavit signed by the vessel owner that lists the new LOA of the vessel.

(3) *Lost or destroyed vessel.* A lost or destroyed vessel may transfer its moratorium qualification or be salvaged under the following conditions:

(i) *Transfer of the Moratorium Qualification of a Lost or Destroyed Vessel.* (A) An eligible vessel that is lost or destroyed between January 1, 1995, through December 31, 1997, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section.

(B) An eligible vessel that was lost or destroyed on or after January 1, 1989, through December 31, 1994, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section, but the vessel receiving the transferred moratorium qualification must make a legal landing of a moratorium species by December 31, 1996, to remain an eligible vessel.

(C) An eligible vessel that was lost or destroyed before January 1, 1989, cannot transfer its moratorium qualification to another vessel or person.

(ii) *Salvage of a lost or destroyed vessel.* (A) An eligible vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain an eligible vessel.

(B) An eligible vessel that was lost or destroyed before January 1, 1989, may be salvaged and remain an eligible vessel only if salvage operations began on or before June 24, 1992, and the vessel makes a legal landing of a moratorium species by December 31, 1996.

(iii) *Application.* A vessel owner must submit an application to NMFS for transfer of moratorium qualification from a lost or destroyed vessel and for the salvage of a lost or destroyed vessel. NMFS must give written approval before any such transfer of moratorium qualification or salvage prior to harvesting moratorium species.

(A) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed from January 1, 1995, through December 31, 1997, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section.

(B) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed during the period January 1, 1989, through December 31, 1994, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

(C) The application for the salvage of a vessel lost or destroyed on or after January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty.

(D) The application for the salvage of a vessel lost or destroyed before January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

§ 676.4 Exemptions.

Effective from January 1, 1995, through December 31, 1997; the following vessels are not subject to the moratorium and may continue to fish during the moratorium in accordance with parts 301, 671, 672, and 675.

(a) A vessel other than a catcher vessel or catcher-processing vessel.

(b) A catcher vessel or catcher/processor vessel that harvests a moratorium species in the Gulf of Alaska and does not exceed 26 feet (7.9 meters) LOA.

(c) A catcher vessel or catcher processor vessel that harvests a moratorium species in the Bering Sea and Aleutian Islands management area and does not exceed 32 feet (9.8 meters) LOA.

(d) A catcher vessel or catcher/processor vessel that meets all the following criteria:

(1) The vessel is a new vessel that is constructed for and used by a Community Development Plan, approved by the Secretary as part of the Community Development Quota programs under §§ 675.27 and 676.24;

(2) The vessel is designed and equipped to meet specific needs that are described in the Community Development Plan; and

(3) The vessel does not exceed 125 feet (38.1 meters) LOA.

(e) An ineligible catcher vessel or catcher/processor vessel that is engaged in the IFQ sablefish and halibut fixed gear fisheries in accordance with regulations at subpart B of 50 CFR part 676 that retains an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents less than 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

§ 676.5 Permit issuance procedure.

This section is effective from [Date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997.

(a) *Groundfish permits.* (1) A vessel owner that intends to harvest Gulf of Alaska or Bering Sea and Aleutian Islands management area groundfish from January 1, 1995, through December 31, 1997, must apply for and be issued a moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802–1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by §§ 672.4 and 675.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel, which is specified on the permit application, does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. All permits issued by NMFS will list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.6.

(b) *Crab permits.* (1) A vessel owner that intends to harvest king and Tanner crab fisheries in Federal waters of the Bering Sea and Aleutian Islands Area from January 1, 1995, through December 31, 1997, must apply for and be issued a crab moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802–1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by § 671.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel that is specified on the permit application does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. A permit issued by NMFS will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeals section at § 676.6.

(c) *Halibut Licenses.* (1) A vessel owner that intends to harvest halibut in waters in and off the State of Alaska from January 1, 1995, through December 31, 1997, must apply for and be issued an unrestricted vessel license from the International Pacific Halibut Commission. An unrestricted vessel license will be issued if:

(i) The vessel owner submits a complete vessel license application to the International Pacific Halibut Commission as required by part 301;

(ii) The vessel has made a qualifying landing; and

(iii) The LOA of the vessel specified on the license application does not exceed the maximum LOA. An unrestricted vessel license issued by the International Pacific Halibut Commission will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If the IPHC determines that the vessel does not satisfy the requirements of (c)(1) of this section, the vessel owner will be issued a restricted vessel license applicable only for International Pacific Halibut Commission management area 2A or 2B. If the applicant is issued a restricted vessel license, the applicant may submit additional information to NMFS within 45 days of issuance of the restricted license. NMFS will review the additional information submitted and notify the vessel owner in writing

whether an unrestricted vessel license will be issued. If NMFS determines that an unrestricted vessel license should be issued, NMFS will instruct the IPHC to issue an unrestricted vessel license to the vessel owner. If NMFS determines that an unrestricted vessel license should not be issued, and the reasons therefor, the vessel owner may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.6.

(d) *Vessel used in the IFQ sablefish and halibut fixed gear fisheries.* An owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, must apply for a groundfish and crab vessel permit. A vessel permit will be issued if the vessel owner submits a complete application to NMFS as required by §§ 671.4, 672.4, or 675.4. The type of permit issued will be based upon the eligibility of the vessel under the moratorium as follows:

(1) *Eligible vessel.* A vessel used in the IFQ sablefish and halibut fixed gear fisheries that is an eligible vessel under the moratorium will be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of moratorium species other than sablefish and halibut subject to applicable directed fishing standards.

(2) *Ineligible vessel.* A vessel used in the IFQ sablefish and halibut fixed gear fisheries that is an ineligible vessel under the moratorium will be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit must not retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board.

(e) *Letter of authorization*—(1) *Vessel permit or license application.* If a vessel owner submits a complete application for a vessel permit or license as specified in §§ 671.4, 672.4 and 675.4, and 50 CFR part 301, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written initial decision to the vessel owner on the permit or license application within 30 days of receipt of the application by NMFS. The letter of authorization will expire 75 days after NMFS issues an initial written decision to the vessel owner on the permit or license application.

(2) *Filing notice of appeal.* If a vessel owner files a notice of appeal with the Regional Director as specified in § 676.6, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written final decision to the vessel owner on the appeal within 30 days of the filing of the notice of appeal with NMFS. The letter of authorization will expire 30 days after the Regional Director issues a written final decision on the appeal.

§ 676.6 Appeals.

This section is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. A vessel owner may file a notice of appeal with the Regional Director within 45 days of the issuance of an initial decision by NMFS that a groundfish and crab vessel permit will not be issued, a restricted halibut license will be issued, or that a restricted groundfish and crab vessel permit will be issued. The notice of appeal must be accompanied by a statement in support of the position of the owner, along with all supporting data and information. The Regional Director will review the records used to make the initial decision and the information submitted with the appeal.

(a) If, during his review, the Regional Director determines that a decision can be made based on a review of the records submitted, the Regional Director will issue a written decision that will be the final administrative decision of the U.S. Department of Commerce.

(b) If, during his review, the Regional Director determines that his decision would benefit from industry expertise beyond that available from a review of the records, then the Regional Director will forward the appeal to the Appeals Board for a recommendation. Subject to Federal and State of Alaska confidentiality regulations, the Appeals Board will review the records used to make the initial decision and the information submitted with the appeal at a public meeting and make a recommendation on the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director will consider the recommendation and issue a written decision on the appeal based on his findings and state the reasons for his decision. The decision of the Regional Director is the final administrative decision of the U.S. Department of Commerce.

§ 676.7 Prohibitions.

Effective from January 1, 1995, through December 31, 1997, it is unlawful for a person to:

(a) Submit false or inaccurate information on a vessel permit application;

(b) Harvest a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel;

(c) Harvest a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification;

(d) Fish for sablefish or halibut with IFQ from a vessel with a restricted groundfish and crab vessel permit and retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board; and

(e) Violate any other provision of subpart A of 50 CFR part 676.

[FR Doc. 94–13469 Filed 5–31–94; 9:18 am]
BILLING CODE 3510–22–P

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50 CFR Chapter II

[Docket No. 940558–4158; I.D. 052394B]

West Coast Salmon Fisheries; Disaster Relief

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has declared that a natural fishery resource disaster exists in the ocean salmon fisheries off the coasts of Washington, Oregon, and California, due to extremely low stock abundances of chinook and coho salmon. To alleviate economic hardship, NMFS intends to make grants available to eligible industry participants. NMFS is requesting written comments, in particular from the fishing industry, Indian tribes, and state fisheries agencies, regarding appropriate limitations, terms, and conditions it should use in providing the proposed assistance to persons engaged in commercial fisheries for uninsured losses resulting from the salmon fisheries resource disaster.

DATES: Comments must be received by August 2, 1994.

ADDRESSES: Comments should be sent to Bruce Morehead, Office of Trade and Industry Services, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, 301/713–2358.

SUPPLEMENTARY INFORMATION:

Background

Although West Coast salmon stocks experience annual fluctuations in abundance, stock abundances in the last few years have been exceptionally low. The ocean salmon fisheries off the coasts of Washington, Oregon, and California are dependent almost entirely on chinook and coho salmon. For chinook salmon, ocean catches fell from a high of 2,121,999 fish in 1988 to a record low of 444,000 in 1992, an almost 80 percent decline in abundance in only 4 years. The 1993 ocean catch of 532,999 chinook was also very low relative to historical averages. For coho, the decline has been even more dramatic, with an ocean catch of 5,334,255 fish in 1976 falling to a record low catch of only 292,000 in 1993—a 95 percent decline. In 1994, the abundances of many coho stocks are expected to be the lowest on record, and are not expected to meet spawning escapement goals, even without any ocean salmon fishing. Most chinook stock abundances also are predicted to be at very low, even record low, levels of abundance.

Salmon fisheries in the ocean waters off Washington and northern Oregon are closed in 1994. Remaining salmon fisheries in the ocean waters off central and southern Oregon and California are at reduced levels and are closed to fishing for coho. It is predicted that 1994 ocean salmon landings will amount to only 289,000 chinook and zero coho. Although fishing seasons for inside (non-ocean) fisheries have not been completely finalized, they are expected to be the most restrictive ever imposed in many areas.

Despite increasingly stringent management measures enacted in recent years to protect these salmon stocks, they have reached a critical stage of depletion, due in part to environmental conditions unfavorable to salmon survival that include: (1) An extended drought in California; (2) less than normal snowpack throughout the western United States; (3) drought followed by extensive flooding in the State of Washington; (4) and an extreme El Niño ocean warming event during 1992–1993, which is believed to have been responsible for extremely poor salmon survival.

Impacts on the Industry

The Pacific Fishery Management Council estimated that, as late as 1988, there were about 5,300 commercial salmon troll vessels fishing off the West Coast, compared to about 2,300 vessels in 1992—a decline of 57 percent over that period. NMFS' Northwest Region conducted an analysis of economic models that suggest that the 1992 West Coast salmon industry involved 8,400 full-time work years. However, much of the employment is part time, so that the total number of individuals impacted by this resource disaster is much greater. Commercial salmon fishermen earned $33.8 million, while marine recreational anglers spent $79.5 million fishing for West Coast salmon in 1992. In 1992, 140 West Coast processing plants processed 72 million pounds (32.7 million kg) of finished salmon products, worth approximately $170 million. These plants employ over 2,000 people for the processing of salmon and other West Coast fish.

Proposed Agency Action

For the reasons set out above, the Secretary has declared that a natural fishery resource disaster exists under section 308(d) of the Interjurisdictional Fisheries Act of 1986 (IFA), as amended (16 U.S.C. 4107). The Secretary has asked the President to transmit to Congress a request for $12 million to assist those persons affected by the West Coast salmon fisheries disaster.

The IFA authorizes the Secretary to award grants to "persons" (defined as individuals, corporations, partnerships, trusts, associations, or other nongovernmental entities) engaged in commercial fisheries impacted by a natural fishery resource disaster, with the following conditions:

1. Eligibility for a grant shall be limited to any person that has less than $2 million in gross revenues annually, as determined by the Secretary.

2. A person may receive a grant under this subsection for up to 75 percent of any uninsured commercial fishery loss resulting from the fishery resource disaster (to the extent that such losses have not been compensated by other Federal and state programs), but shall receive no more than $100,000 in the aggregate for all such losses suffered as a result of the disaster.

NMFS intends to develop specific implementing regulations governing the award of the proposed grants. Section 308(d) of the IFA requires the Secretary to establish appropriate limitations, terms, and conditions for awarding grants, including provisions specifying the means by which an applicant must demonstrate claimed losses and limiting the aggregate amounts that may be paid to persons affiliated with each other or under common ownership. Such limitations, terms, and conditions are to be established after there has been notice and opportunity for public comment.

NMFS is seeking comments from the fishing industry regarding the design of an assistance program that will alleviate economic hardship, including a program that would reduce future levels of fishing effort for resources covered under the Disaster Declaration. NMFS is considering compensating fishermen who relinquish their state fishing permits for the lost value of their permits as a result of the fishery resource disaster. Given the pivotal role of the States of California, Oregon, and Washington in regulating the coastal salmon fisheries, NMFS would need to work closely with these states in designing an effective program. Although government entities are not eligible under the statute to receive assistance, NMFS also is requesting comments from Indian tribes, state fisheries agencies, and any other interested parties. Specific comments and recommendations are requested on the following questions:

1. What would be appropriate goals for the program? How might salmon abundance be increased through this program?

2. Should there be additional eligibility criteria, within statutory constraints, to receive a grant?

3. NOAA is considering soliciting applications from non-governmental partnerships, trusts, and associations of fishermen in order to administer significant numbers of awards; do such associations exist?

4. If fishing permits are relinquished, how can their future reissuance be handled by the states?

5. What should be the basis for the valuation of the permits, and should inactive permits be valuated differently?

6. What would be appropriate documentation to determine the extent of uninsured losses?

7. What should be the starting and ending dates of the disaster period for purposes of awarding grants, and what factors should the Secretary consider in determining these dates?

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–13490 Filed 5–31–94; 9:42 am]

BILLING CODE 3510–22–P

Notices

Federal Register
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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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review

AGENCY: Committee on Judicial Review.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States.

DATES: Thursday, June 16, 1994, at 10 a.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Judicial Review will meet for further discussion of a study by Professor Howard Fenton of procedures at the U.S. Foreign-Trade Zones Board. The Committee may also discuss a study in progress on choice of forum in government contract bid protest proceedings.

Attendance at the meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: May 31, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–13658 Filed 6–2–94; 8:45 am]

BILLING CODE 6110–01–W

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Friday, June 24, 1994, from 1 p.m. to 4 p.m. in Washington, DC. The exact location will not be determined until the week of June 14, 1994. Please call 202–224–2300 for the specific location.

The meeting of the Commission shall be open to the public. The proposed agenda includes discussion on the long-term budget picture.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue NE., Washington, DC 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice-Chairman.

[FR Doc. 94–13459 Filed 6–2–94; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of American Indian and Alaska Native Government Administrative Records.

Form Number(s): AIANAR.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 188 hours.

Number of Respondents: 569.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau plans to conduct the Survey of American Indian and Alaska Native Government Administrative Records as part of a program of research and development (R&D) to assist in formulating policy and design options for the Year 2000 Decennial Census. A major part of this R&D is the investigation of the potential of administrative records to improve coverage in the census. The use of American Indian and Alaska Native government administrative records has the potential to improve coverage by reducing the coverage differential on reservations and trust lands and improving coverage in Alaska Native villages. All Federally-recognized tribal governments will be contacted to provide information about their administrative records. The records themselves will not be obtained as part of the survey. Data collection for this survey will be conducted under contract by Westat, Inc. Information gathered in this survey will help to determine whether administrative records held by tribal governments would be effective in improving coverage in the Year 2000 Decennial Census.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13570 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Prelist.

Form Number(s): DG–101A, DG–101B, DG–169.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,340 hours.

Number of Respondents: 52,000.

Avg Hours Per Response: 1.5 minutes.

Needs and Uses: The Census Bureau is planning to test various methods for address list compilation and update in conjunction with the 1995 Census Test. The Census Bureau uses two primary methods to create and update its address files: precanvass and prelist. In the urban test areas, the Census Bureau will create a Master Address File (MAF) by extracting addresses from the Census Bureau's 1990 Address Control File (ACF) and updating the extract using the United States Postal Service Delivery Sequence File. Then the Census Bureau will update the address list during the precanvass operation. For the rural test sites, the Census Bureau will create an address file through a prelist operation; the address list will be used in the subsequent update/leave operation to deliver the census questionnaires. During prelist, census enumerators canvass an area and list all housing units within the assigned area. The prelist operation is designed to identify and collect complete physical location address, mailing address, and name of householder for all living quarters. This will enable an enumerator to return to the living quarters to update the address and to deliver a questionnaire during the update/leave operation. It will also provide the information needed to conduct the local government review of the census address list.

Affected Public: Individuals or households.

Frequency: One–time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13565 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Training Survey

Form Number(s): NTS–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,033 hours.

Number of Respondents: 6,400 will receive an introductory letter. 3,000 of those will be contacted for an interview.

Avg Hours Per Response: 35 minutes including the letter.

Needs and Uses: The Bureau of the Census plans to conduct the National Training Survey (NTS) for the Center for Educational Quality of the Workforce (EQW), a group of social scientists funded by the National Center for Education Statistics to study the workplace in America. The NTS will provide unique information on employer–provided training by identifying relationships between the training and economic characteristics of the establishment. The EQW will incorporate the results of this survey into a larger five–year examination of the American workplace and will coordinate its efforts with similar studies and groups in other countries and with the World Bank. This examination will provide planners and policy–makers in government and the private sector with information on how our workforce compares and competes with other countries in South America and the Far East. The Census Bureau will also study ways of incorporating establishment data gathered in the NTS into our Longitudinal Research Database.

Affected Public: Businesses or other for–profit organizations.

Frequency: One–time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13566 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Congressional Committees.

Form Number(s): 628, 628L.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 21 hours.

Number of Respondents: 242.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In October 1993, the Census Bureau, with approval from OMB, surveyed all members of Congress to determine how we can better meet their needs for Census Bureau data. We are requesting OMB clearance to conduct a similar survey of Congressional committees/subcommittees. The survey will identify which committees/subcommittees use our data, which do not want any census data, and which would like a briefing on how to use Census Bureau data. This information is needed to determine how the Census Bureau can revise and improve the current program it uses to disseminate data to committees/subcommittees of Congress. This information will enable us to provide committees/subcommittees of Congress only the data for which they have a specific need, and will reduce the amount of data currently being sent that is not being used.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13564 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey – November 1994 Voting and Registration Supplement.

Form Number(s): Voting and registration items included with CPS automated instrument.

Agency Approval Number: 0607–0466.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 1,140 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 1.2 minutes.

Needs and Uses: The November Voting and Registration Supplement to the Current Population Survey (CPS) is collected once every two years. Data are collected on voter and nonvoter behavior and correlated with demographic characteristics. We will collect this data as part of the November 1994 CPS through a series of supplemental items which will be part of the automated CPS instrument. The supplement yields statistics on voter and nonvoter characteristics and current voter trends which are useful for election officials who formulate policies relating to the voting and registration process. These data enable policymakers to keep up–to–date with issues such as changes in voter participation based on such characteristics as age, sex, race, ethnicity, and educational attainment. Data are used by colleges, political party committees, research groups, and other private organizations.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 26, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13460 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 22–94]

Proposed Foreign-Trade Zone—Palm Beach County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Palm Beach County Department of Airports, on behalf of the Board of Commissioners of the County of Palm Beach, Florida, requesting authority to establish a general-purpose foreign-trade zone at sites in Palm Beach County, within the West Palm Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 23, 1994. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated (1991).

The proposed zone would be the second general-purpose zone in the West Palm Beach Customs port of entry area. The existing zone, FTZ 135, is located at the Port of Palm Beach (Grantee: Port of Palm Beach, Board Order 348, 52 FR 9903, 3/27/87).

The proposed foreign-trade zone would consist of sites (306 acres) at the Palm Beach International Airport and at the new North Palm Beach County Airport, both located in Palm Beach County, Florida. *Site 1* (24 acres) is at the Palm Beach International Airport, and includes the Air Cargo Facility (Site 1a-3 acres); a proposed air cargo facility (Site 1b-5 acres); and a future industrial park type site (Site 1c-16 acres). *Site 2* (282 acres-3 parcels) is at the North Palm Beach County Airport, Beeline Highway and Route 786. The sites are owned by Palm Beach County.

The application contains evidence of the need for additional zone services in the Palm Beach County area. Several firms have indicated an interest in using zone procedures within the proposed project for warehousing/distribution of such items as electronic components, peripherals of data processing machines, lock components and ceramic tile. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on June 23, 1994, at 9 a.m., in the Thomas McCaddy Room, 12th Floor Governmental Center, 301 N. Olive Avenue, West Palm Beach, Florida.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 2, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 17, 1994).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 4 East Port Road, Suite 104, Riviera Beach, Florida 33404.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: May 25, 1994

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–13568 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A-201-802]

Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

AGENCY: International Trade Administration/Import Administration/Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period August 1, 1992, through July 31, 1993, and one firm, CEMEX, S.A. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler, Officer of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-1757.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 41239) a notice of "Opportunity to Request Administrative Review" for the August 1, 1992, through July 31, 1993, period of review (POR) of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the petitioners, the Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement and the National Cement Co. of California, Inc., requested a review. On September 30, 1993, the Department published a notice of "Initiation of Antidumping Review" for CEMEX (58 FR 51053). Thus, the Department is now conducting a review of this respondent pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The written description remains dispositive as to the scope of the product coverage.

Best Information Available

On October 14, 1993, we sent CEMEX a standard antidumping questionnaire which instructed CEMEX to report U.S. sales and home market sales of such or similar merchandise.

In a letter dated November 16, 1993, CEMEX requested that it be excused from reporting home market sales of Type I cement, merchandise similar but not identical to Type II and Type V cement. CEMEX noted that during the POR it had sold only Type II and Type V cement in the United States, and stated that it had sufficient home market sales of these types of cement in the home market for a fair value comparison. CEMEX argued that, in accordance with statutory requirements and the Department's practice, fair value comparisons should, wherever possible, be based upon sales of identical merchandise, and therefore there was no need to report home market sales of Type I cement.

In a letter dated November 29, 1993, we denied CEMEX's request. We noted that in the second administrative review, covering the period August 1, 1991, through July 31, 1992, we had found that CEMEX's home market sales of Type II and Type V cement had not been made in the ordinary course of trade and we had disregarded those sales for comparison purposes. We noted that, given such a finding in a previous review, it was possible that a similar situation might exist with regard to home market sales of Type II and Type V cement in the instant review. We therefore required CEMEX to report home market sales of Type I cement.

On January 10, 1994, CEMEX responded to our standard questionnaire. In its response, CEMEX did not provide the required information regarding home market sales of Type I cement. Rather, CEMEX argued that in its view its home market sales of Type II and Type V cement had always been made in the ordinary course of trade, and constituted sufficient basis for a fair value comparison.

On February 4, 1994, we issued a supplementary questionnaire to CEMEX that, among other things, reiterated the requirement that CEMEX report its home market sales of Type I cement. We emphasized that these sales relevant to CEMEX's claim that its home market sales of Type II and Type V cement had been made in the ordinary course of trade during the period of the third review. We noted in the cover letter that lack or incompleteness of response might result in our relying on best information available (BIA).

On March 1, 1994, CEMEX responded to our supplementary questionnaire. Again, CEMEX failed to report its home market sales of Type I cement. CEMEX reiterated its contention that its sales of identical merchandise satisfied all statutory criteria for use in calculating foreign market value (FMV). CEMEX argued that there was not yet any evidence on the record of the instant review to refute this contention, and that it was not incumbent on CEMEX to establish that its home market sales of Type II and Type V cement were made in the ordinary course of trade CEMEX stated that, given its position it was not willing to incur the expense necessary to provide complete Type I cement sales data.

Given the Department's finding that home market sales of Type II and Type V cement were made outside the ordinary course of trade in the period of the second review, we have been concerned about the possibility that CEMEX's home market sales of type II and Type V cement might also have been made outside the ordinary course of trade during the instant POR.

Section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations provide that FMV shall be based on the price at which "such or similar merchandise" is sold in the exporting country in the "ordinary course of trade for home consumption". Section 771(15) of the Tariff Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see also 19 CFR 353.46(b)).

In the previous review, *i.e.*, the second review, where CEMEX reported home market sales of Type I, Type II, Type V cement, petitioners made an

allegation that CEMEX's have market sales of Type II and Type V cement were outside the ordinary course of trade. In the final results of the second review we compared CEMEX's home market sales of Type II and Type V cement with sales of similar merchandise (namely, Type I cement) within the same class or kind.

Based on this comparison and on other factors raised by petitioners, we concluded in the second review that CEMEX's home market sales of Type II and Type V cement were not made in the ordinary course of trade, and we did not use them for the purposes of calculating FMV (See Gray Portland Cement and Clinker for Mexico: Final Results of Antidumping Duty Administrative Review; 58 FR 47253 (September 8, 1993)).

Based on this finding, we believe that it is necessary to compare Type II and Type V cement sales with Type I cement sales to determine whether the same conditions existed during the instant review, *i.e.*, the third review. However, after several requests for information, CEMEX has not reported Type I cement sales data that would permit such a comparison.

Preliminary Results of Review

While CEMEX argues that it is not incumbent upon it to provide the Type I cement sales data, its refusal to provide essential information has prevented the Department from determining whether home market sales of Type II and Type V cement were sold in the ordinary course of trade. Therefore, we must resort to the use of BIA, is accordance with section 776(c) of the Traffic Act. For a detailed analysis of this issue, see the Memorandum from the Office Director to the Deputy Assistant Secretary for Compliance, dated May 18, 1994, which is on file in room B–099 of the Department's main building.

As for the choice of BIA, we note that we have an established "two-tier" system:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we use as BIA the higher of (a) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative review or (b) the highest rate found in this review for any firm for the same class or kind or merchandise in the same country of origin.

2. When a company substantially cooperated with our request for information, but failed to provide the information requested in a timely manner or in the form required, we use as BIA the higher of (a) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or (b) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin.

See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et. al.*; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360, 28379 (June 24, 1992). In this case, we are using first-tier BIA because CEMEX was uncooperative. The BIA rate is the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation, *i.e.*, CEMEX's rate of 60.33 percent (55 FR 29244, July 18, 1990). Thus, as a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1992, through July 31, 1993, to be 60.33 percent.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, 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 review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of 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 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 manufacturers or exporters will be 59.91 percent, as explained below.

On May 25, 1993, the CIT in Floral Trade Council v. United States, 822 F. Supp. 766 (CIT 1993), and Federal-Mogul v. United States, 839 F. Supp. 864 (CIT 1993), determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for this order will be 59.91 percent, which was the "all others" rate established in the final notice of the LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 26, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–13567 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 040594D]

Marine Mammals; Gray Whale Research and Monitoring Plan

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

ACTION: Notice of report availability and request for comments.

SUMMARY: On January 7, 1993, NMFS made a determination that the eastern North Pacific (California) stock of gray whale (*Eschrictius robustus*) had recovered and should be removed from the List of Endangered and Threatened Wildlife (List) under the Endangered Species Act (ESA). Section 4(g) requires NMFS to implement a system to monitor the status, for at least 5 years, of any species that has recovered and is removed from the List. This notice announces the availability of the draft Gray Whale Research and Monitoring Plan (Plan), that was prepared under section 4(g) of the ESA, for review and comment.

DATES: Comments on the Plan must be postmarked by August 2, 1994.

ADDRESSES: Send comments on the Plan to William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226. A copy of the Plan is available from this address or by telephoning the individual listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, 301/713–2055.

SUPPLEMENTARY INFORMATION:

NMFS issued a proposed determination on November 22, 1991 (56 FR 58869) that the California population of gray whales should be removed from the List. After a 104-day comment period, NMFS issued a final determination on January 7, 1993 (58 FR 3121).

Under section 4(a) of the ESA, NMFS has the responsibility to monitor the status of the California gray whale for a period of at least 5 years following delisting. The purpose of monitoring populations following delisting is to evaluate the validity of the status determination used in the delisting process and to determine whether the status of the population has deteriorated within a 5-year period subsequent to delisting. If at any time during this period NMFS finds that the species' well-being is at risk, the ESA (section 4(b)(7)) requires NMFS to issue emergency protective regulations to ensure the conservation of the species.

NMFS is making available for comment its proposed Plan. The Plan was developed by the staff of the National Marine Mammal Laboratory in coordination with the NMFS Gray Whale Monitoring Task Group, which is composed of scientists and managers who have specific responsibilities for coordinating activities involving gray whales. The Task Group was asked to develop a plan, monitor research activities after the plan is implemented, and also to serve as a quick response advisory team in the event of any catastrophic event affecting gray whales.

The following research is recommended for the first 5-year monitoring plan, in order of priority:

(1) Estimation of abundance from biennial surveys (or other appropriate sampling period) during the southbound migration;

(2) Estimation of calf production during the northbound migration;

(3) Determination of potential biases in methods used to estimate abundance and calf production;

(4) Determination of trends in pregnancy rates from animals taken in any subsistence harvests that may be conducted by Russia on behalf of its natives in Siberian Arctic;

(5) Estimation of the number of animals killed in any subsistence harvests that may be conducted by Russia on behalf of its natives in Siberian Arctic;

(6) Use of Bayesian synthesis to evaluate current status of the population;

(7) Determination of the degree to which anthropogenic factors (e.g., chemical contaminants, marine noise) may compromise the viability of this population (including its habitat).

Dated: May 25, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–13499 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 27, 1993, March 25 and April 8, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 68398, 59 FR 14155 and 16798) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cord Assembly, Elastic,
4020–01–072–4558.
Frame, Picture,
7105–00–052–8689.
Original and Duplicate Microfiche, Program 1566–S, 7690–00–NSH–0018.
(Requirements for the Wright-Patterson Air Force Base, Ohio)

Services

Janitorial/Custodial, Basewide, Fort Sheridan, Illinois.
Janitorial/Custodial, HQ, U.S. Strategic Command, Buildings 500, 501, 502, 515, 522, 591 and 597, Offutt AFB, Nebraska.
Janitorial/Custodial, U.S. Army Reserve Center, 2513–15 Gravel Road, Fort Worth, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13553 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial, Bureau of Land Management, Las Vegas District Office, Las Vegas, Nevada.
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, Nevada.
Janitorial/Custodial, Philadelphia Naval Base, Buildings 1, 4 and 100, Philadelphia, Pennsylvania.
NPA: Elwyn, Inc., Elwyn, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13554 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

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.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities 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 to the Government.

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 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 have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Cup, Plastic,
7350–00–761–7467,
7350–00–914–5088,
7350–00–914–5089.
NPA: Oklahoma League for the Blind Oklahoma City, Oklahoma.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13555 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Solid Waste Management Facility, Andersen AFB, Guam; Notice of Availability Draft Environmental Impact Statement

The United States Air Force announces the availability of a Draft Environmental Impact Statement for the construction of a new solid waste management facility at Andersen Air Force Base, Guam. The new facility will provide for recycling, composting, and disposal of asbestos, rubble (hardfill), and municipal solid waste. The purpose of the proposed action is to manage the solid waste generated by Andersen AFB (12,000 tons per year) after the existing on-base unlined landfill reaches capacity in approximately 2 years. The preferred alternative for municipal solid waste disposal is vertical expansion of the existing landfill. The proposed action is considered an interim measure, designed not to exceed 10 years, to accommodate Air Force needs until an island-wide solid waste management system can be implemented; however, the proposed action does have the capability for limited extension in the event that an island-wide system does not become available at the end of 10 years. Specifically, it is proposed that a new landfill be constructed on top of the existing one in such a manner that the liner system for the new facility will serve as a cap for the old facility. Provisions will be made for the collection, removal, and treatment of leachate, and for groundwater monitoring. Other alternatives considered include: a new landfill constructed at one of seven alternate sites on Andersen AFB, use of the Government of Guam Ordot Landfill, use of a proposed Government of Guam waste-to-energy facility, future use of an island-wide Government of Guam and Department of Defense landfill, incineration on base, use of the Navy landfill at the Apra Harbor Complex, and no action.

Two major environmental issues affect the selection of a preferred alternative. First, the majority of Andersen Air Force Base overlies the Northern Guam Lens, which has been designated a sole source aquifer under the Safe Drinking Water Act. The Guam Environmental Protection Agency has established a groundwater protection zone that constrains activities in areas overlying the aquifer or serving as recharge zones. Second, the forested area along the cliffline on the east, north, and west boundaries of Andersen Air Force Base is habitat for endangered species. The primary endangered species of concern are the Mariana crow and the Mariana fruit bat. The principal threat to these species is predation on eggs and young by an introduced species, the brown tree snake. The proposed action includes engineering controls (a double liner with leachate collection, removal, and treatment) to minimize the likelihood of impacts to the aquifer. Furthermore, by capping the existing landfill, the proposed action will reduce the production of leachate from previously landfilled materials. Potential effects on the biota, and endangered species in particular, are unlikely because the proposed action will take place at a site that is already disturbed and has minimal habitat value.

The United States Air Force invites comments and suggestions from all interested parties on the findings of the Environmental Impact Statement, and has tentatively scheduled a public hearing for May 1994. Notice of the exact time and place of the hearing will be published in the news media. If concerned persons are not able to attend the public hearing, written comments and suggestions will be accepted. To ensure that the Air Force will have sufficient time to fully consider public contributions, written comments must be received no later than forty-five (45) days from the publication of today's notice. Comments or requests for further information concerning this Environmental Impact Statement should be addressed to Mr. Roy N. Tsutsui, Chief, Environmental Flight, Andersen AFB, Guam, 633 CES/CEV, Bldg. 18001, Unit 14007, APO, AP 96543–4007; Phone: (671) 366–2101.

List of Subjects

Environmental Protection, Environmental Impact Statement, U.S. Air Force, Anderson AFB, Guam, Notice of Availability, Solid waste.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–13525 Filed 6–2–94; 8:45 am]

BILLING CODE 3190–01–P

Department of the Army

Notice of Closed Meeting, Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of closed meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 8 July 1994.

Time: 0730–1630.

Place: Fort Detrick, Maryland.

Proposed Agenda: Medical Aspects of Chemical Defense.

Portions of this meeting will be closed to the public in accordance with section 552b(c) of title 5 U.S.C., specifically subparagraph (1) thereof and title 5 U.S.C., appendix 1, subsection 10(d). Should additional information be desired, please contact the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258, telephone 756–8012.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–13523 Filed 6–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–23 June 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Summer Study Team on "Technical Architecture for C4I" will meet in the Pentagon to hear selected briefings on Architecture and Standards. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–13524 Filed 6–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–1]

Improved Schedule for Remediation in the Defense Nuclear Facilities Complex

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of

Energy pursuant to 42 U.S.C. 2286a concerning improved schedule for remediation in the defense nuclear facilities complex. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 5, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: May 31, 1994.

John T. Conway,

Chairman.

Improved Schedule for Remediation in the Defense Nuclear Facilities Complex

The halt in production of nuclear weapons and materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unremediated. The Board has concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected.

We are especially concerned about specific liquids and solids containing fissile materials and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture.

It is not clear at this juncture how fissile materials produced for defense purposes will eventually be dealt with long term. What is clear is that the extant fissile materials and related materials require treatment on an accelerated basis to convert them to forms more suitable for safe interim storage.

The Board is especially concerned about the following situations:

• Several large tanks in the F-Canyon at the Savannah River Site contain tens of thousands of gallons of solutions of plutonium and trans-plutonium isotopes. The trans-plutonium solutions remain from californium-252 products; they include highly radioactive isotopes of americium and curium. These tanks, their appendages, and vital support systems are old, subject to deterioration, prone to leakage, and are not seismically qualified. If an earthquake or other accident were to breach the tanks, F-Canyon would become so contaminated that cleanup would be practically impossible. Containment of the radioactive material under such circumstances would be highly uncertain.

• The K-East Basin at the Hanford Site contains hundreds of tons of deteriorating irradiated nuclear fuel from the N-Reactor. This fuel has been heavily corroded during its long period of storage under water, and the bottom of the basin is now covered by a thick deposit of sludge containing antinide compounds and fission products. The basin is near the Columbia River. It has leaked on several occasions, is likely to leak again, and has design and construction defects that make it seismically unsafe.

• The 603 Basin at the Idaho National Engineering Laboratory (INEL) contains deteriorating irradiated reactor fuel from a number of sources. This basin also contains sludge from corrosion of the reactor fuel. The seismic competence of the 603 Basin is not established.

• Processing canyons and reactor basins at the Savannah River Site contain large amounts of deteriorating irradiated reactor fuel stored under conditions similar to those at the 603 Basin at INEL.

• There are thousands of containers of plutonium-bearing liquids and solids at the Rocky Flats Plant, the Hanford Site, the Savannah River Site, and the Los Alamos National Laboratory. These materials were in the nuclear-weapons-manufacturing pipeline when manufacturing ended. Large quantities of plutonium solutions are stored in deteriorating tanks, piping, and plastic bottles. Thousands of containers at the Rocky Flats Plant hold miscellaneous plutonium-bearing materials classed as "residuals", some of which are chemically unstable. Many of the containers of plutonium metal also contain plastic and, in some at the Rocky Flats Plant, the plastic is believed to be in intimate contact with the plutonium. It is well known that plutonium in contact with plastic can cause formation of hydrogen gas and pyrophoric plutonium compounds leading to a high probability of plutonium fires.

We note that removal of fissile materials from the 603 Basin at INEL has begun. We are also following the plans for remedying several of the other situations listed. In general these plans are at an early stage. In addition, we are aware of steps DOE has taken to assess spent fuel inventories and vulnerabilities. We also note that a number of environmental assessments are being conducted in relation to the situations we have listed above. Finally, we note that a draft DOE Standard has been prepared for methods to be used in safe storage of plutonium metal and plutonium oxide.

These actions notwithstanding, the Board is concerned about the slow pace of remediation. The Board believes that additional delays in stabilizing these materials will be accompanied by further deterioration of safety and unnecessary increased risks to workers and the public.

Therefore the Board recommends:

(1) That an integrated program plan be formulated on a high priority basis, to convert within two to three years the materials addressed in the specific recommendations below, to forms or conditions suitable for safe interim storage. This plan should recognize that remediation will require a systems engineering approach, involving integration of facilities and capabilities at a number of sites, and will require attention to limiting worker exposure and minimizing generation of additional waste and emission of effluents to the environment. The plan should include a provision that, within a reasonable period of time (such as eight years), all storage of plutonium metal and oxide should be in conformance with the draft DOE Standard on storage of plutonium now being made final.

(2) That a research program be established to fill any gaps in the information base needed for choosing among the alternate processes to be used in safe conversion of various types of fissile materials to optimal forms for safe interim storage and the longer term disposition. Development this research program should be addressed in the program plan called for by (1) above.

(3) That preparations be expedited to process the dissolved plutonium and trans-plutonium isotopes in tanks in the F-Canyon at the Savannah River Site into forms safer for interim storage. The Board considers this problem to be especially urgent.

(4) That preparations be expedited to repackage the plutonium metal that is in contact with, or in proximity to, plastic and to eliminate the associated existing hazard in any other way that is feasible and reliable. Storage of plutonium materials generated through this remediation process should be such that containers need not be opened again for additional treatment for a reasonably long time.

(5) That preparations be expedited to process the containers of possibly unstable residues at the Rocky Flats Plant and to convert constituent

plutonium to a form suitable for safe interim storage.

(6) That preparations be expedited to process the deteriorating irradiated reactor fuel stored in basins at the Savannah River Site into a form suitable for safe interim storage until an option for ultimate disposition is selected.

(7) That the program be accelerated to place the deteriorating reactor fuel in the K-East Basin at the Hanford Site in a stable configuration for interim storage until an option for ultimate disposition is chosen. This program needs to be directed toward storage methods that will minimize further deterioration.

(8) That those facilities that may be needed for future handling and treatment of the materials in question be maintained in a usable state. Candidate facilities include, among others, the F- and H-Canyon and the FB- and HB-Lines at the Savannah River Site, some plutonium-handling glove box lines among those at the Rocky Flats Plant, the Los Alamos National Laboratory, and the Hanford Site, and certain facilities necessary to support a uranium handling capability at the Y-12 Plant at the Oak Ridge Site.

(9) Expedited preparations to accomplish actions in items (3) through (7) above should take into account the need to meet the requirements for operational readiness in accordance with DOE Order 5480.31.

John T. Conway,

Chairman.

[FR Doc. 94-13509 Filed 6-2-94; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 31, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, 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, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-8196.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. .

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, *e.g.*, expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 27, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency

Title: Report of Financial Need and Certification for the Jacob K. Javits Fellows Program

Abstract: The Report is designed to collect required information from institutions of higher education regarding graduate participants of the Jacob K. Javits Fellows Program. The data collected is required in order that continued funding may be requested for the fellows.

Additional Information: The U.S. Department of Education has requested an emergency review and approval from the Office of Management and Budget. The Department's requested approval date is May 31, 1994. This collection requirement expires on May 31, 1994. If this happens, the Department would have no legal means of collecting the information from institutions in which the successful applicants plan to enroll, and therefore would not be able to obligate the funds appropriated for this purpose in FY 1994.

Frequency: One time

Affected Public: Individuals or households; Non-profit institutions

Reporting Burden:
Responses: 100
Burden Hours: 500

Recordkeeping Burden:
Recordkeepers: 500
Burden Hours: 500

[FR Doc. 94-13485 Filed 6-2-94; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-435-012, et al.]

DC Tie, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 1994.

Take notice that the following filings have been made with the Commission:

1. DC Tie, Inc.

[Docket No. ER91-435-012]

Take notice that on May 14, 1994, DC Tie, Inc. (DC Tie) filed certain information as required by the Commission's July 11, 1991 letter order in Docket No. ER91-435-000. Copies of DC Tie's informational filing are on file with the Commission and are available for public inspection.

2. Eastern Power Distribution Inc.

[Docket No. ER94-964-001]

Take notice that on May 5, 1994, Eastern Power Distribution (EPD) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised F.E.R.C. Electric Rate Schedule No. 1, which tariff sheets are attached as Appendix A.

The attached tariff sheet is submitted in compliance with the Commission's April 5, 1994 order which required EPD to file a revised rate schedule which codifies that no sale may be made pursuant to the rate schedule to any entity controlled by, under common control with, or controlling Eastern Power Distribution.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER94-996-000]

Take notice that on May 17, 1994, Southern California Edison Company tendered for filing supplemental information to its February 28, 1994 filing in the above-referenced docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER94-1046-000]

Take notice that on April 28, 1994, Northern States Power Company (Minnesota) tendered an Amendment to Supplement No. 52 to the Connection Agreement between Northern States Power Company (Minnesota) and the Cooperative Power Association.

NSP submits this Amendment to clarify that the requested effective date of this agreement is May 15, 1994. NSP requests waiver of the Commission's Notice Requirements under Part 35 so the Agreement may be effective as of the date requested.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER94-1060-000]

Take notice that on May 19, 1994, Florida Power Corporation (FPC) tendered for filing supplemental information to its March 18, 1994 filing in the above-referenced docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER94-1134-000]

Take notice that PacifiCorp, on May 23, 1994, tendered for filing an amendment to its filing of the Letter Agreement dated February 16, 1994 between PacifiCorp and Idaho Power Company.

PacifiCorp requests that a waiver of prior notice be granted to its filing.

Copies of this filing were supplied to Idaho Power Company, the Idaho Public Utilities Commission and the Public Utility Commission of Oregon.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Co.

[Docket No. ER94-1137-000]

Take notice that on May 20, 1994, Arizona Public Service Company (APS) tendered for filing proposed Amendment No. 1 to the Capacity Sale Agreement between Citizens Utilities Company (Citizens) and APS in response to Staff's recommendations in this docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Alabama Power Co.

[Docket No. ER94-1158-000]

Take notice that on May 19, 1994, Alabama Power Company submitted supplemental information in this docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corp.

[Docket No. ER94-1245-000]

Take notice that Florida Power Corporation (Florida Power) on May 11, 1994, tendered for filing a Third Amendment between Florida Power Corporation and Seminole Electric Cooperative, Inc. for Supplemental Retail Service, Transmission and Distribution Service and Load Following Service. The Third Amendment provides for Florida Power to sell and Seminole Electric Cooperative, Inc. (Seminole) to buy all interruptible resale service required by a member system of Seminole for new interruptible loads locating within the member system service territory within Hardee County, Florida.

Florida Power requests that the rate change be permitted to become effective sixty days after its submission for filing.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13475 Filed 6-2-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER93-299-001, et al.]

Florida Power Corp., et al.; Electric Rate and Corporate Regulation Filings

May 25, 1994.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER93-299-001]

Take notice that on May 13, 1994, Florida Power Corporation (FPC) tendered for filing its Compliance Refund Report in the above-reference docket.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER94-945-000]

Take notice that on May 23, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing supplemental material relating to the above docket.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Co.

[Docket No. ER94-1269-000]

Take notice that on May 17, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems extending the deadline for the Municipals' submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. The letter agreement extends that deadline from May 19, 1994 until June 20, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers; Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Otter Tail Power Co.

[Docket No. ER94-1270-000]

Take notice that on May 18, 1994, Otter Tail Power Company (Otter Tail) tendered for filing an agreement between Otter Tail and Manitoba Hydro Electric Board (MHEB). Otter Tail states that the Agreements are for the sale of capacity and energy from MHEB to Otter Tail for the months of May through October for 1995 and 1996.

Otter Tail requests the Commission to allow this schedule to become effective on May 1, 1995.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER94-1271-000]

Take notice that on May 17, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Niagara Mohawk Power Corporation (NiMo) to provide for the sale of excess energy and capacity. The agreement provides for sales of excess energy and capacity to be made subject to cost based ceiling rates. The ceiling rate for energy that Con Edison sells is 110 percent of the highest incremental energy cost on Con Edison's system and the ceiling rate for capacity that Con Edison sells is $26.00 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon NiMo.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Co.

[Docket No. ER94-1272-000]

Take notice that on May 18, 1994, Citizens Utilities Company (Citizens), tendered for filing an Agreement whereby Citizens provided Emergency Transmission Service to the Village of Swanton, Vermont, Electric Light Department (Swanton) on May 15, 1994, during a recently-scheduled outage of the Vermont Electric Power Company (VELCO). VELCO currently provides transmission service to Swanton. Citizens states that a copy of its filing was served on Swanton and the Vermont Public Service Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. West Texas Utilities Co.

[Docket No. ER94-1273-000]

Take notice that on May 18, 1994, West Texas Utilities Company (WTU) tendered for filing two Letter Agreements between WTU and the City of Coleman, Texas (Coleman). Pursuant to the Letter Agreements, WTU has agreed to make additional energy available to Coleman during the on-peak hours of the summer months of 1994, pursuant to a Supplemental Sales Agreement between WTU and Coleman, previously filed with the Commission. WTU has also agreed to extend the availability of additional energy during on-peak hours for the summer months of all future years in which the Supplemental Sales Agreement is in effect.

WTU requests waiver of the notice requirements in order that the Letter Agreement may become effective as of June 1, 1994.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Co.

[Docket No. ER94-1274-000]

Take notice that on May 18, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit A to the Wholesale Power Supplement Agreement (Agreement) between APS and the United States of America, Bureau of Indian Affairs on behalf of the San Carlos Indian Irrigation Project (SCIP) (APS-FERC Rate Schedule No. 201).

Current rate levels are unaffected, revenue levels for the 12 months immediately after the requested effective date are unchanged from those currently on file with the Commission, and no other significant change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on SCIP and the Arizona Corporation Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Power Systems Inc.

[Docket No. ER94-1276-000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing an annual rate revision of the Transmission Service Fee. On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 65 for the Transmission Service Agreement (Agreement) between MPSI and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the George Neal Generating Station Unit No. 4 to CFU's system. Section 2 of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Power Systems Inc.

[Docket No. ER94-1277-000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing an annual rate revision of the Transmission Service Fee. On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 38 for the Transmission Service Agreement (Agreement) between MPSI and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the Council Bluffs Energy Center Unit No. 3 to CFU's system. Exhibit B of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on Cedar Falls Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Midwest Power Systems Inc.

[Docket No. ER94-1278-000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a biennial rate revision of the Facilities Charge. On July 20, 1992, FERC accepted for filing (Docket No. ER91-684-000) and designated Rate Schedule FERC No. 112 for the Interconnection and Interchange Agreement (Agreement) between Nebraska Public Power District (NPPD) and Iowa Public Service Company (IPS) n/k/a Midwest Power Systems Inc. (MPSI). Docket No. ER92-784-000, approved by the Commission on October 23, 1992, redesignated IPS FERC No. 112 as MPSI Rate Schedule FERC No. 66. This Agreement reflects a transmission interconnection between the two systems. NPPD will pay MPSI

a facilities charge based on transmission line investment. Amendment 2 of the Agreement provides that the facilities charge shall be reviewed and adjusted biennally.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Facilities Charge may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Rochester Gas and Electric Corp.

[Docket No. ER94–1279–000]

Take notice that on May 19, 1994, Rochester Gas and Electric Corporation (RG&E), tendered for filing a proposed Power Sales Tariff in order to make available for sale or exchange, surplus capacity and/or energy at negotiated rates that will be no higher than RG&E's cost of service.

A copy of the filing was served on the Public Service Commission of the State of New York.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power Company

[Docket No. ER94–1280–000]

Take notice that on May 20, 1994, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR § 35.13 tendered for filing two proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The first change is an increase in the Energy Cost Rate (ECR or Rider II) from $.002689/kWh to $.002767/kWh April 7, 1994. The second change is a revision to the language in Rider II to include the accounting treatment of sulfur dioxide emission allowance transactions. The revenue effect of the first change is to increase annual revenues from the municipal resale class by approximately $10,891.77 or 0.14%. The second change has no effect on rates at this time.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (Pa.PUC). The proposed changes have been implemented as to Penn Power's retail customers pursuant to Pa.PUC orders and regulations. These settlement agreements were approved by the Federal Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77–277–007 and ER81–779–000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pa.PUC.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER94–1282–000]

Take notice that on May 20, 1994, Carolina Power & Light Company (CP&L), tendered for filing with the Commission the changes outlined below to its agreements with Brunswick EMC, Cartaret-Craven EMC, and Tideland EMC.

1. *Brunswick EMC—Chadbourn-Peakcock 115 kV*—Increase in metered voltage from 69 kV to 115 kV.
2. *Cartaret-Craven EMC—Laurel Road 115 kV*—Installation of a new point of delivery.
3. *Tideland EMC—Edwards 230 kV*—Increase in delivery voltage from 115 kV to 230 kV.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the respective Exhibit A's.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corp.

[Docket No. ER94–1283–000]

Take notice that on May 20, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 175, an agreement between Niagara Mohawk and Indeck Energy Services of Corinth, Inc. (Indeck).

Rate Schedule No. 175 provides or the wheeling of certain loads by Niagara Mohawk to Consolidated Edison Company as New York, Inc. generated by Indeck. the proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes that the revisions be effective on September 1, 1994.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223, and

Indeck Energy Services of Corinth, Inc., 1130 Lake Cook Road, Suite 300, Buffalo Grove, Ill 60089

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas & Electric Corp.

[Docket No. ER94–1284–000]

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on May 20, 1994, tendered for filing its development of actual costs for 1992 and 1993 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1992 amounted to $1.0118 per MW, -day to Con Edison and $3,5434 per MW, -day to Niagara Mohawk and are the basis on which charges for 1993 have been estimated. The actual costs for 1993 amounted to $0.9921 per MW, -day to Con Edison and $3,6915 per MW, - day to Niagara Mohawk and are the basis on which charges for 1994 have been estimated.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR § 35.11 of the Regulations to permit charges to become effective January 1, 1994 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13474 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–93–000]

KN Interstate Gas Transmission Company; Informal Settlement Conference

May 27, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737 or Donald Williams at (202) 208–0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13477 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. RP94–191–001]

May 27, 1994.

Take notice that on May 24, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub. Original Sheet No. 237E, with a proposed effective date of April 1, 1994.

National states that the proposed tariff sheet is filed to correct a typographical error on Original Sheet No. 237E, Third Revised Volume No. 1, filed in the above-captioned proceeding and accepted by the Commission on April 18, 1994.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13480 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–106–002]

Pacific Gas Transmission Company; Proposed Changes in FERC Gas Tariff

May 27, 1944.

Take notice that on May 25, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 127, with an effective date of November 1, 1993.

PGT states that the purpose of this filing is to correct a typographical error in First Revised Sheet No. 127, which was filed on February 14, 1994 in compliance with the Commission's February 1, 1994, Order in this proceeding.

PGT states that a copy of its filing is being served on the affected customer, interested state regulatory agencies, and the parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 94–13478 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP83–58–021 and TM94–3–7–002]

Southern Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 27, 1994.

Take notice that on May 25, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised sheets:

First Substitute Third Revised Sheet No. 4B.06 (effective May 1, 1992)
First Substitute Fourth Revised Sheet No. 4B.06 (effective May 1, 1993)

Southern states that the above-referenced tariff sheets are being filed with proposed effective dates of May 1, 1992 and May 1, 1993, in compliance with the Federal Energy Regulatory Commission (Commission) order dated April 28, 1994 in Docket No. TM94–3–7–000 and the Stipulation and Agreement (Stipulation) in Docket No. RP83–58–000, et al., as approved by the Commission's March 23, 1989 order. These sheets reflect a revised take-or-pay allocation to Atlanta Gas Light Company (Atlanta) resulting from the direct connection of Arcadian Corporation (Arcadian) to Southern's pipeline system.

Southern states that copies of the filing were served on the affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (Section 385.211). All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13476 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–125–005]

Texas Gas Transmission Corporation; Filing of Supplemental Material

May 27, 1994.

Take notice that on May 25, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing

supplemental supporting schedules and working papers in Docket No. RP94–125, *et al.*

Texas Gas states that the filing is being made to comply with various Commission Orders in Docket Nos. RP94–125 and RS92–24.

Texas Gas states that copies of the supplemental schedules and working papers are being mailed to Texas Gas' affected jurisdictional customers, interested state commissions, and those appearing on the RP94–125 service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 94–13479 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4711–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 16, 1994 Through May 20, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Final EISs

ERP No. F–COE–E32192–NC

Wilmington Harbor Channel Widening and Navigation Improvement, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC.

Summary: EPA had environmental concerns with the potential adverse impacts associated with the explosives to be used in channel excavation.

ERP No. F–COE–F35041–OH

Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH.

Summary: EPA had environmental concerns with impacts to water quality, recreation and sediment loading.

ERP No. F–COE–G35019–LA

Gulf of Mexico Waters Oyster Shell Dredging Project, COE Section 10 and 404 Permits, East Cote Blanche and Atchafalaya Bays, Terrebonne and St. Mary Parishes, LA.

Summary: EPA's concerns have been adequately addressed in the final EIS.

Dated: May 31, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–13559 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4711–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed May 23, 1994 Through May 27, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940196, Draft EIS, FHW, WI–13 Marshfield Regional Mobility Study for Transportation Improvements, Funding and COE Section 404 Permit, City of Marshfield, Wood and Marathon Counties, WI, Due: July 19, 1994, Contact: Richard C. Madrzak (608) 264–5968.

EIS No. 940197, Draft EIS, AFS, ID, Packsaddle Timber Sale and Road Construction Project, Implementation, Idaho Panhandle National Forest, Sandpoint Ranger District, Bonner County, ID, Due: July 18, 1994, Contact: Joni Urbanski (208) 263–5111

EIS No. 940198, Final EIS, FHW, NY, NY–9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, Funding and Approval of Permits, New York County, NY, Due: July 05, 1994, Contact: Harold J. Brown (518) 472–3616.

EIS No. 940199, Final EIS, AFS, UT, WY, North Slope Oil and Gas Leasing, Application for Permit to Drill, High Uinta Mountain, Evanston and Mountain View Ranger District, Wasatch-Cache National Forest and Flaming Gorge District, Ashley National Forest, Intermountain Region, Summit and Daggett Counties, UT and Uinta County, WY, Due: July 05, 1994, Contact: Barry Burkhardt (801) 524–5030.

EIS No. 940200, Final EIS, FHW, CA, CA–41 Improvements, Elkhorn Avenue to North Avenue, Funding, Fresno County, CA, Due: July 05, 1994, Contact: Leonard E. Brown (916) 551–1307.

EIS No. 940201, Final EIS, FTA, NJ, Boonton Line/Montclair Branch Rail Lines Corridor Improvements, Funding, Hudson, Morris, Sussex, Essex and Passaic Counties, NJ, Due: July 05, 1994, Contact: Letitia Thompson (212) 264–8162.

EIS No. 940202, Draft EIS, FHW, PA, I–81 Interchange Project, Construction, Funding and COE Section 404 Permit, Borough of Chambersburg, Franklin County, PA, Due: July 18, 1994, Contact: Manual A. Marks (717) 782–4422.

EIS No. 940203, Final EIS, USN, NC, Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC, Due: July 05, 1994, Contact: Pam Anderson (804) 445–2334.

Amended Notices

EIS No. 940118, Revised Draft EIS, FRC, NB, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835) Hydroelectric Project, Updated Information, Application for Licenses, Near the Confluence of the North/South Platters, Keith, Lincoln, Garden, Dawson and Grasper Counties, NB, Due: June 30, 1994, Contact: J. Ronald McKitrick (202) 219–2783.

Published FR 04–08–94—Review period extended.

EIS No. 940161, Draft EIS, FHW, VA, VA–37 Highway Transportation Improvement, Construction from VA–37/I–81/US–11 (south) to VA–37/US–11 (north), Funding and COE Section 404 Permit, City of Winchester, Frederick County, VA, Due: July 31, 1994, Contact: James M. Tumlin (804) 771–2371. Published FR 05–06–94—Review period extended.

Dated: May 31, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–13560 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–U–M

[FRL-4891-6]

Science Advisory Board Notification of Public Advisory Committee Meeting(s) Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

(1) Radiation Environmental Futures Subcommittee Teleconference—June 20, 1994

The Radiation Environmental Futures Subcommittee (REFS) of the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a teleconference meeting on Monday, June 20, 1994, from 11 a.m. to 1 p.m. eastern time. In this teleconference meeting, the REFS intends to concur on technical edits to its draft report on review of the topic of radiation environmental futures. The Subcommittee is working toward preparing a draft Subcommittee consensus document. The current working draft is not available to the Agency or the public. The teleconference meeting is open to the public and teleconference lines will be assigned on a first come basis. The latest public meetings to discuss this topic were held on May 4-6, 1994 (see 59 FR 16809-16811 Friday, April 8, 1994).

Any member of the public wishing further information, such as a proposed agenda on the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260-6552, FAX at (202) 260-7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the teleconference should contact Dr. Kooyoomjian no later than June 15, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of three minutes. Written comments received by the SAB by June 10, 1994 may be mailed to the SAB's REFS prior to the meeting; comments received after that date will be provided to the REFS as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than June 15, 1994.

(2) Ecological Processes and Effects Committee—June 22-23, 1994

The Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will meet on June 22-23, 1994, at the Old Colony Inn, 625 First Street, Alexandria, VA 22314, telephone (703) 548-6300. The meeting will begin both days at 8:30 a.m. and end no later than 5 p.m. on June 22 and no later than 1 p.m. on June 23.

The Committee will receive updates from various Subcommittees, review any available Subcommittee reports, and continue work on a draft report on forecasting future environmental issues as part of the Environmental Futures Project. For more information on the Environmental Futures Project, see 59 FR 16811 Friday, April 8, 1994. The Committee will also engage in a consultation with Agency staff on the development of saltwater dissolved oxygen criteria.

Single copies of the briefing materials provided to the Committee for the consultation on saltwater dissolved oxygen criteria may be obtained from Amy Leaberry, Health and Ecological Criteria Division (4304), Office of Science and Technology, USEPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 260-0658. Copies of these documents are NOT available from the Science Advisory Board Staff. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW., Washington DC 20460, by telephone at (202) 260-6552, fax at (202) 260-7118, or via The INTERNET at: WINSTON.MARY@EPAMAIL.EPA.GOV.

Anyone wishing to make an oral presentation at the meeting should contact Stephanie Sanzone, Designated Federal Officer for EPEC, by 4 p.m. on June 15, 1994. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

(3) Radiation Environmental Futures Subcommittee (REFS) Meeting—July 11, 1994

The Radiation Environmental Futures Subcommittee (REFS) of the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a meeting on Monday, July 11, 1994, from 9 a.m. to 5 p.m. at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703-549-3434). In this meeting, the REFS intends to finalize technical edits to its draft report on review of the topic of radiation environmental futures. The Subcommittee is working toward preparing a draft Subcommittee consensus document. The current working draft is not available to the Agency or the public. This topic is also to be considered at a teleconference meeting on June 20 (see announcement above).

Any member of the public wishing further information, such as a proposed agenda on the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400-F), U.S. Environmental Protection Agency; 401 M Street, SW, Washington, DC 20460, by telephone at (202) 260-6552, FAX at (202) 260-7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the meeting should contact Dr. Kooyoomjian no later than July 6, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by the SAB by June 30, 1994 may be mailed to the SAB's REFS prior to the meeting; comments received after that date will be provided to the REFS as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 6, 1994.

(4) Radiation Advisory Committee Meeting—July 12-13, 1994

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a meeting on Tuesday, July 12, 1994 and Wednesday, July 13, 1994. On July 12, 1994, the meeting will begin at 9 a.m. and adjourn at approximately 5:45 p.m. On July 13, 1994, the meeting will begin at 8:30 a.m. and adjourn no later than 5 p.m. The meeting will be held at the Courtyard Marriott Hotel,

2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3434). In this meeting, the RAC intends to go to closure on the Radiation Environmental Futures Draft Report, the Radon Science Initiative Report, and the RAC Retrospective Report. Should the RAC not go to closure on any of these topics, it is likely that a teleconference will be advertised and held some time on each topic following this meeting. The public is advised that the Radiation Environmental Futures Report and the RAC Retrospective Report are not yet available to the public. Earlier drafts of the Radon Science Initiative Report were released to the public, and the document is currently undergoing revision. Other topics at the meeting should include a continuing discussion on Cleanup Standards, planning for an upcoming review on EMF and Carcinogenicity, briefings or consultations from the Office of Radiation and Indoor Air (ORIA) staff on Low Level Waste Research and other topics as time permits. The RAC will also discuss briefly the anticipated Fiscal Year 1995 review topics. The latest public meeting of the RAC was held on May 5 and 6, 1994 (See 59 FR 16809–16811, Friday, April 8, 1994).

Any member of the public wishing further information, such as a proposed agenda of the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the meeting should contact Dr. Kooyoomjian no later than July 6, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by the SAB by June 30, 1994 may be mailed to the SAB's RAC prior to the meeting; comments received after that date will be provided to the RAC as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 6, 1994.

Environmental Futures Committee

The Environmental Futures Committee (EFC) of the Science Advisory Board (SAB) will conduct a public meeting on July 13, 1994 at the Gangplank Restaurant, Water Street SE., Washington, DC 20460.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. At these meetings, the EFC will receive briefings on Futures issues; discuss the overall progress of the project (including tracking the activities of the SAB Standing Committees that are involved in the project); and begin to outline its draft report.

These meetings are open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meetings or who wishes to submit oral or written comments (at least 35 copies) should contact one of the Designated Federal Officials, Dr. Edward Bender, Science Advisory Board (Mail Code 1400F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–2562; FAX (202) 260–7118, or via the Internet at BENDER.EDWARD@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 25 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: May 24, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–13563 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4891]

Science Advisory Board Clean Air Scientific Advisory Committee Review of a Draft Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting on July 20 and 21, 1994. The Committee will examine the four-volume draft document, Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants (EPA/600/AP–93/004a,b,c,d). The purpose of the meeting is to assess the scientific and technical adequacy of the document to serve as a basis for the Agency's proposed National Ambient Air Quality Standards for ozone. The meeting will be held at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, NC 27713. The telephone number is 919/361–4660, their fax is 929/361–2256. The sessions will begin on July 20 at 8:30 a.m. and end no later than 5 p.m. on July 21.

The meeting is open to the public, although seating is limited. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Clean Air Scientific Advisory Committee at 202/260–8414. Those individuals requiring a copy of the Agenda should contact Ms. Janice Cuevas at the same number or by way of INTERNET at JONES.Janice@EPAMAIL.EPA.GOV. Members of the public wishing to make comments at the sessions should provide those comments to Mr. Bond no later than July 6, 1994. His address is U.S. Environmental Protection Agency, Science Advisory Board (1400), 401 M Street, SW., Washington, DC 20460. Comments will be limited to five minutes and the Clean Air Scientific Advisory Committee and Science Advisory Board staff expect that such items will not be repetitive of previously submitted material.

On Monday, January 30, 1994, EPA announced in the **Federal Register** (59 FR 4278) the availability for public comment of the subject external review draft EPA document (EPA/600/AP–93/004 a,b,c,d) to be reviewed at the upcoming July 20–21 CASAC Public

Meeting. To obtain copies of the draft document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569-7562; FAX (513) 569-7566; and request the external review draft of "Air Quality Criteria for Ozone and Related Photochemical Oxidants". Please provide your name, mailing address, and the EPA document number, EPA/600/AP-93/004a-d.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Lori Gross at 202/260-8414 or by way of INTERNET at GROSS.Lori@EPAMAIL.EPA.GOV

Dated: May 13, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94-13562 Filed 6-2-94; 8:45 am]

BILLING CODE 6560-50-P-M

[OPP-50784; FRL-4778-7]

Issuance of an Amendment/Extension of an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: On April 5, 1994, EPA issued an amendment/extension for Experimental Use Permit (524-EUP-73) to Monsanto Company to conduct field testing of a transgenic plant pesticide. The first EUP on this organism was issued April 10, 1992. The Agency has determined that this may be of national or regional significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before July 5, 1994.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP-50784 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-305-7690).

SUPPLEMENTARY INFORMATION: The Monsanto Company experimental use program proposes to assess the effectiveness of six different versions of delta-endotoxin when expressed in several varieties of cotton and to introduce the delta-endotoxin genes into other cotton cultivars. An extension of the experimental use permit was granted May 18, 1993. An additional amendment was granted December 1993, for the purposes of adding two sites in Puerto Rico. The purpose of this amendment/extension is to conduct an additional 12 experiments on 120 sites in 15 states (four additional states to include Florida, Maryland, Missouri, and Virginia) and the territory of Puerto Rico. Total transgenic B.t.k. cotton plantings at all sites combined will not exceed 1,665 acres. Cotton lines for the additional sites contain the plasmid vectors PV-GHBKO3, PV-GHBKO4, and PV-GHBKO7.

EPA's scientific staff has evaluated the potential for adverse effects on nontarget species and the environment as a result of this EUP amendment. According to Monsanto, the B.t.k. delta-endotoxin is expected to occur in roots, stems, leaves, bolls and seeds of the cotton plant; the NPT II marker enzyme is expected to occur in stems and seeds. Neither protein was detected by Monsanto in the pollen, nectar or lint of the genetically-engineered cotton plants. The Agency does not foresee any human health risks or effects resulting from the proposed field tests because there will be minimal human exposure.

Several microbial pesticides containing nonengineered B.t.k. proteins have been registered over the last few years for which extensive avian, aquatic, and beneficial insect testing has failed to demonstrate any significant toxicity to these nontarget organisms. Monsanto, however, is using a truncated form of delta-endotoxin in three of its seven genetically-engineered cotton plants; it is possible that the truncated forms of B.t.k. proteins may affect a greater range of organisms than the full-length, nonengineered B.t.k. proteins present in wettable powder or oil flowable microbial pesticide formulations. This is not a concern, however, due to the limited exposure for nontarget organisms with the EUP amendment.

Because the field tests will be conducted in areas of the States where no known population of endangered lepidopteran species exist, no risk is expected as a result of the additional sites. In addition, because of the low exposure due the limited acreage and duration of the EUP, EPA feels that there will not be a situation warranting a formal review under the Endangered Species Act for any endangered mammals, birds, invertebrates, plants, or aquatic species.

Comments on this EUP amendment should be submitted by July 5, 1994.

Lists of Subjects

Environmental protection.

Dated: May 18, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-13557 Filed 6-2-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC 94-01, Auction No. 1]

Auction Notice and Filing Requirements for Ten Nationwide Licenses for Personal Communications Services in the 900 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice, erratum.

SUMMARY: This erratum corrects the May 23, 1994, Public Notice published on May 31, 1994 (59 FR 28097) regarding filing requirements applicable to small businesses bidding at auction for nationwide narrowband Personal Communications Service (PCS) licenses. The erratum is necessary because the original Public Notice incorrectly stated that qualified small businesses were

eligible for installment financing on these licenses. The intended effect of this action is to clarify that such financing is not available to these small businesses.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jackie Chorney, (202) 418-2030.

SUPPLEMENTARY INFORMATION: This is a summary of the erratum to Public Notice, Report No. AUC 94-01, released May 23, 1994. The full text of the erratum is available during normal business hours in room 833-B, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

SYNOPSIS OF ERRATUM: No winning bidder, including small businesses, will be allowed to pay the balance due for any narrowband nationwide PCS license acquired at auction with installment payments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-13462 Filed 6-2-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

The Bank Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Bank Holding Company, Griffin, Georgia; to acquire 100 percent of the voting shares of First Community Bank of Henry County, McDonough, Georgia.

2. Regions Financial Corporation, formerly First Alabama Bancshares, Inc., Birmingham, Alabama, to acquire 100 percent of the voting shares of BNR Bancshares, Inc., New Roads, Louisiana, and thereby indirectly acquire Bank of New Roads, New Roads, Louisiana.

3. Regions Financial Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First Community Bancshares, Inc., Rome, Georgia, and thereby indirectly acquire First Rome Bank, Rome, Georgia.

4. Washington/Wilkes Holding Company, Washington, Georgia; to acquire 100 percent of the voting shares of The Peoples Bank, Crawfordville, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Wintrust Investments, Inc., Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of North Shore Community Bank & Trust Company, Wilmette, Illinois, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to merge with First Bancshares, Inc., Bartlesville, Oklahoma, and thereby indirectly acquire WestStar Bank, Bartlesville, Oklahoma, and WestStar Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13486 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

The Bank of Montreal; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of Montreal, Montreal, Canada; The Bank of Nova Scotia, Toronto, Canada; Barclays PLC, London, United Kingdom; Barclays Bank PLC, London, United Kingdom; CS Holding, Zurich, Switzerland; Deutsche Bank AG, Frankfurt, Germany; The Fuji Bank, Limited, Tokyo, Japan; HSBC Holdings, PLC, London, United Kingdom; HSBC Holdings B.V., Amsterdam, Netherlands; Marine Midland Banks, Inc., Buffalo, New York; The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; The Nippon Credit Bank, Ltd., Tokyo, Japan; and The Sanwa Bank Limited, Osaka, Japan; to acquire Government Pricing Information System, Inc., New York, New York, a joint venture, and thereby engage in

data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13487 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

Carolina First Corporation; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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 June 22, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to engage *de novo* through its subsidiary, Landwood Ridge Limited Partnership, Greenville, South Carolina, in constructing and operating an affordable housing project for elderly persons pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Greenville County, South Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Peotone Bancorp, Inc., Peotone, Illinois; to engage *de novo* in providing data processing services to its subsidiary banks and to five unaffiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Southwest Bancorp, Inc., Worth, Illinois; to engage *de novo* in providing data processing services to its subsidiary banks and to five unaffiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13488 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

The Summit Bancorporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Summit Bancorporation, Chatham, New Jersey; to acquire all of the voting shares of Crestmont Financial Corporation, Edison, New Jersey, and thereby indirectly acquire Crestmont Federal Savings and Loan Association, Edison, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and Crestmont Insurance Agency, Edison, New Jersey, and thereby engage in the sale as agent or broker of insurance designed to repay the principal amount of credit extended in the event of death, disability or involuntary unemployment of the borrower pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Immediately subsequent to the acquisition, Crestmont Financial Corporation will be merged with and into The Summit Bancorporation and Crestmont Federal Savings and Loan Association will be converted, through a series of intermediate steps, into a New Jersey-chartered savings bank and then into a New Jersey-chartered commercial bank that will then be merged with and into The Summit Bancorporation's subsidiary bank, Summit Bank, Chatham, New Jersey. Accordingly, The Summit Bancorporation has also applied under section 3(a)(3) of the Bank Holding Company Act to acquire the interim New Jersey-chartered savings and commercial banks. As an alternative, under certain circumstances, The Summit Bancorporation will exercise an option to acquire up to 19.9 percent of

the shares of Crestmont Financial Corporation.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13489 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Intent To Prepare Environmental Impact Statement for New Federal Courthouse in Savannah, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C.A. 4321 to 4370d), and the Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces its intent to prepare an Environmental Impact Statement (EIS) for the siting and construction of a new Federal Courthouse within the Central Business Area (CBA) of Savannah, Georgia.

The EIS will examine the short and long term impacts from constructing and operating a New Courthouse in the Savannah CBA, on the natural and human environments. This includes but is not limited to impacts on historic and cultural resources, traffic and parking, and socioeconomics (including the impacts on local businesses and neighborhoods). The EIS will also examine measures to mitigate unavoidable adverse impacts of the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation requirements under Section 106 (36 CFR 800) of the National Historic Preservation Act of 1966 (16 U.S.C. 470), regarding the impacts on historic properties as a result of undertaking the proposed action. GSA is very much aware of the potential for adverse affects on historic resources as a result of proposed action, and will make every effort to identify and take into account such affects when siting this project.

The New Courthouse will house 331 employees in an approximately 250,000 gross square foot structure that will meet the 10-year space requirements of the US Courts. The project will contain five courtrooms, and office space for Court-related agencies, as well as space for GSA and the Postal Service. This information is presented only as a summary of the project's space requirements: GSA has not designed the facility even in concept. Design of the facility will not begin until after a site has been selected and procured. The site itself will not be procured until after the EIS and the NEPA process is completed.

Although a specific site has not yet been determined, there are two important locational considerations for this project. First, Executive Order 12072 (16 AUG 1978, 43 FR 36869) requires Federal agencies to give primary consideration to the CBA when acquiring space in an urban area unless the Federal agency has operational needs requiring it to locate outside the CBA. The purpose of this Executive Order is to encourage the location of Federal facilities where they will serve to strengthen the nation's cities and to make them attractive places to live and work. In this case, the Court has no need to locate outside of the CBA.

Second, the Court does have an operational need that would be best served if the New Courthouse is located adjacent to the existing Federal Building-Courthouse at 125 Bull Street. This location would considerably reduce the security risk, as well as the administrative and operational inefficiencies of "splitting" the Courts, by minimizing the distance between two locations. An adjacent location is strongly preferred by the Courts and GSA; however, it is a preference only, and does not preclude consideration of an alternative CBA site.

As part of NEPA and Section 106 implementation, GSA is actively seeking public input into the decision-making process, including the identification of issues to be examined in the EIS, and the identification of "reasonable" alternatives to the proposed action. Reasonable, in this case, means that the alternative must still satisfy GSA's basic project goals. These goals are to satisfy the Courts' operational requirements, and house its 10-year space requirement, in a cost-effective manner, in Government-owned space.

GSA has tentatively identified the following alternatives, some of which may not be technically feasible, to be examined in the EIS:

- "No Action," that is, undertake no new construction.
- Construction adjacent to the existing Federal Building-Courthouse at one of the following potential locations:

—On a parcel bounded by State, Bull, Broughton, and Whitaker Streets (preferred alternative).

—On a parcel bounded by York, Bull, Oglethorpe, and Whitaker Streets.

—On a parcel bounded by Broughton, Barnard, State, and Whitaker Streets.

—On a parcel bounded by State, Barnard, York, and Whitaker Streets.

—On a parcel bounded by Barnard, York, Whitaker, and Oglethorpe Streets.

- Identification and consideration of other feasible sites that will satisfy the stated goals of the project in the CBA will be determined through the scoping process and by Solicitation for Offers by GSA.

As part of the public scoping process, you are encouraged to contact GSA in writing at the following address with your concerns and comments regarding the proposed project: Mr. Philip Youngberg, Regional Environmental Officer—4PL, 401 West Peachtree Street, NW., Suite 2500, Atlanta, GA 30365–2550; or FAX your comments to Mr. Youngberg at 404–331–7169. Comments should be postmarked no later than July 5, 1994.

GSA also intends to conduct a Public Scoping Meeting to solicit verbal comments, and address general questions concerning the project, NEPA, and Section 106. A Notice of this meeting and all subsequent public meetings conducted by GSA for this project will appear in the Savannah News-Press at lest two weeks prior to the meeting date. Notices announcing the availability and review periods for the Draft EIS and Final EIS will also be published in the Savannah News-Press. Persons and organizations on the mailing list will be notified of all meetings and publications by mail. Persons who would like to be added to the mailing list should write or call GSA at the address or phone number listed in this notice.

Dated: May 19, 1994.

Judith M. Cobb,

Director, Planning Staff (4PL).

[FR Doc. 94–13536 Filed 6–2–94; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Requests for Nominations of Members of Clinical Practice; Guideline Panel on Acute Myocardial Infarction

The Agency for Health Care Policy and Research (AHCPR) has announced a request for proposals and intends to award a contract to a non-profit organization to develop a clinical practice guideline and to develop related medical review criteria, standards of quality, and performance measures for Acute Myocardial Infarction. The contractor will establish

a panel of health care experts and consumers to assist in developing a clinical practice guideline on Acute Myocardial Infarction and to assist in developing medical review criteria, standards of quality, and performance measures. The AHCPR, on behalf of the contractor, invites nominations of qualified individuals to serve as chairperson(s) and members of the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c-6 and 1320b-12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Medical review criteria, standards of quality, and performance measures are then developed based on the guidelines produced.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR can arrange for development of guidelines: 1. Panels of qualified experts and health care consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the contract process for development of a clinical practice guideline on Acute Myocardial Infarction.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will assist the contractor in developing the clinical practice guideline on Acute Myocardial Infarction will consist of two co-chairpersons and ten to fifteen other members. The work will be divided into two phases. Phase I is development of the clinical practice guideline. Phase II is development of medical review criteria, standards of quality, and performance measures based on the guideline.

The role of the panel members is to assist the contractor to: develop a decisionmaking process; determine the focus of the guideline and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; consider and advise on principal health care issues; monitor and provide counsel on development of medical review criteria, standards of quality, and performance measures; and review and approve the interim and final drafts of the different versions of the guideline. The co-chairpersons will provide leadership in carrying out these roles.

To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, pharmacists, allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR, will maintain, to the extent possible, a balance of individuals selected from academic settings and individuals selected without full-time academic appointments. At least two members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline. Some participants in the guideline process (panel members, consultants, peer or pilot reviewers) should have expertise in epidemiology, health services research, or health economics, and familiarity with the clinical condition being studied. To the extent possible, the panel should have appropriate representation in terms of gender, minority populations, and geographic areas of the United States.

The AHCPR is especially interested in receiving nominations of individuals with: (1) Experience in developing and/or commitment to developing clinical guidelines, medical review criteria, standards of quality, and performance measures; (2) relevant training and clinical experience; (3) relevant experience in basic and/or clinical research in acute myocardial infarction, including publication of relevant peer-reviewed articles; (4) demonstrated interest in quality of care, medical outcomes, and medical effectiveness; (5) knowledge of the epidemiology of acute myocardial infarction; (6) experience in health services research or health economics, with expertise in the area of acute myocardial infarction; and (7) personal experience of acute myocardial infarction, either as a patient, family member, or friend of a patient, or as a person who actively works with consumer groups interested in acute myocardial infarction. The AHCPR encourages nominations of women and individuals who are members of minority population groups. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or the final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons should take into consideration the criteria specified below, which AHCPR will use in approving final selections:

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical practice guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedures or clinical services;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Subsequent to approval by AHCPR, the contractor will appoint the panel co-chairpersons. After the panel co-chairpersons have been appointed, nominations for members of the panel will be reviewed by the contractor and the co-chairpersons, prior to proposing panel members to AHCPR. Following AHCPR review and approval of proposed members' qualifications, review of the overall composition of the panel to ensure representation of a range of expertise and experience, and review of potential conflict of interest, the contractor will appoint panel members.

Nominations should indicate whether the individual is being recommended to serve on the panel as a co-chairperson or as a member. Each nomination must include two copies of the individual's curriculum vitae or resume, and two copies of a letter of nomination with a statement of the rationale for the specific nomination.

To be considered, nominations must be received by July 15, 1994 at the following address: Francis Chesley, Project Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd, Suite 310, Rockville, MD. 20852. Information about this contract, RFP No. 282–94–2013, may be obtained from Patrick Joy, Division of Acquisition Management, Government Acquisition Branch, room 5–101, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, (301)443–8826.

Requests for copies of the contract solicitation may be transmitted by facsimile to 301–443–3238.

Dated: May 24, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–13464 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–90–P

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 444]

Health Studies Related to the National Exposure Registry

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement/grant program to conduct health studies of trichloroethylene (TCE)-exposed subpopulations that comprise the TCE Subregistry of the National Exposure Registry. The studies will address health conditions identified by ATSDR as potential health conditions associated with environmental exposure to TCE, with emphasis on neurotoxic disorders. The recipient will utilize the National Exposure Registry Trichloroethylene (TCE) Subregistry database in designing and executing these studies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority: This program is authorized under sections 104(i)(1)(E),(7), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, (42 U.S.C. 9604 (i)(1)(E),(7), and (15)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American People.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund 3–5 new and competing awards. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this announcement is to solicit scientific proposals designed

to study the occurrence of/and risk factors for specified health outcomes for persons who have had documented environmental exposure to TCE through drinking or using contaminated water. The study population will include all, or a subset, of the TCE Subregistry registrants. These studies will increase the knowledge base, and hence improve the ability of public health programs to address potential public health problems related to exposure to hazardous substances.

Several research topics were suggested based on the analysis of the TCE Subregistry baseline data. The topics are to be considered suggestions and not limitations. These topics are:

—Hearing, speech impairment in subpopulation exposed at ≤10 years of age (neurological disorders)
—Cardiac problems (possibly congenital) in subpopulation exposed at ≤10 years of age
—Diabetes
—Hypertension/stroke/heart problems in adult subpopulation

Program Requirements

The TCE baseline data and documentation are available on CD-ROM (4.75 inch disc) which is accessed using the Statistical Export and Tabulation System (SETS), data format ISO 9660. This can be run on a fully IBM-compatible microcomputer 286/386/486 with 640K of memory, three megabytes of free space on a hard drive, an operating system of MS-DOS 3.1 or higher and a fully installed CD-Rom reader.

Applicants must propose studies which will address one or more of the following areas of investigation:

A. Evaluate the occurrence of adverse health effects in the identified population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure (see Purpose section for the specific disease outcomes specified).

B. Identify risk factors for adverse health effects in the identified populations. This will include hypothesis generating cohort or case-control studies on potentially impacted populations to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions. (See Purpose section for a listing of the adverse health effects of concern.)

C. Develop methods to diagnose adverse health effects (see Purpose section for the adverse health effects of concern) in populations. This will include medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations.

ATSDR will provide financial assistance to applicants in designing and executing analytic epidemiologic studies to explore the relationship between exposure to hazardous substances and the occurrence of, and risk factors for, environmental exposure to TCE through drinking and using contaminated water, using all or a subset of the TCE Subregistry registrants.

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement by ATSDR. Grantees must meet the following requirements: The application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problems.

The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis and evaluation of the test results of biologic specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

By comparison, the activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, ATSDR will assist the collaborator in conducting the study. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below and ATSDR shall be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Recipient will design, develop, and implement a protocol to conduct the necessary study of exposed individuals.

b. Recipient is required to provide proof, by citation of State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, which pertains to an individual and is therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

c. If study requires knowledge of registrant personal identifiers, recipient will develop a mechanism, working through ATSDR, for interaction with the affected community to obtain necessary permission for the release of this information to the recipient.

2. ATSDR Activities

a. ATSDR will assist in developing the study.

b. ATSDR will provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

c. ATSDR will provide consultation and assist in monitoring the collection and handling of information and the sampling and testing activities.

d. ATSDR will participate in the statistical and epidemiologic analysis.

e. ATSDR will collaborate in interpreting the study findings.

f. ATSDR will assist (act as the intermediary) in obtaining registrant permission for the release to the recipient of personal information.

g. ATSDR will conduct technical and peer review.

Evaluation Criteria

Applications will be reviewed and evaluated for scientific and technical merit according to the following criteria:

A. Scientific and Technical Review Criteria of New Applications

1. Appropriateness and Knowledge of Study Design—25%

The extent to which the applicant's proposal addresses: (a) Rationale for the proposed study design; (b) the identification of a target (exposed/diseased) population; (c) the identification of an appropriate comparison group; (d) a consideration of sample size; (e) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (f) a detailed plan for analysis of the data.

2. Proposed Study—25%

The adequacy of the proposal relevant to: (a) The study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the

specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (d) the likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

3. Relationship to Initiative—15%

The extent to which the application addresses the areas of investigation outlined by ATSDR.

4. Quality of Data Collection—15%

The extent to which: (a) The study ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure, confounding factors, and biomedical testing; (b) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (c) the laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest; and d) the quality control, quality assurance, precision and accuracy of information for the proposed tests are provided and acceptable.

5. Applicant Capability and Coordination Efforts—10%

The extent to which the proposal has described: (a) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

6. Program Personnel—10%

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, no later than 60 days after the application deadline. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.) The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulation, 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Cost Recovery

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation,

claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and that are funded by the cooperative agreement mechanism will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

D. Disclosure

Recipient is required to provide proof by way of citation to State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

E. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning technical review (ATSDR selected reviewers), release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 21, 1994. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Additional information on application procedures, copies of application forms, other material, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, GA 30333, telephone (404) 639–6200.

The complete technical report "National Exposure Registry Trichloroethylene (TCE) Subregistry Baseline Technical Report" is available through NTIS (# PB93–209187), May 1993. A summary of the technical report, the "Registrants Report", and a copy of the questionnaire used to collect the data is available through ATSDR (request by calling Dr. JeAnne Burg, telephone (404) 639–6202.

Please refer to Announcement Number 444 when requesting information and submitting an application.

Potential Applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–13505 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–70–P

Agency for Toxic Substances and Disease Registry

[Announcement 431]

Surveillance of Hazardous Substances Emergency Events

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct surveillance of hazardous substances emergency events. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Surveillance and Data Systems and Environmental Health. (To order a copy of "Healthy People 2000," see the section Where To Obtain Additional Information.)

Authority

This program is authorized in sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i)(1)(E) and (15)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are the official public health departments of the States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund approximately 15 awards. It is expected that the average new award will be $70,000 ranging from $60,000 to $80,000 per award. It is expected that the awards will begin on or about September 30, 1994, with a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Grantees currently funded under ATSDR's Program Announcement 207 can apply and, if successful, the current award would roll over into this one (competitive renewal) for a project period of 5 years. If a current grantee applies under this competitive renewal announcement and is unsuccessful, it would not jeopardize the current award; ATSDR will honor the current awards through the expiration of the project period, subject to satisfactory progress and the availability of funds. If a current grantee should choose not to apply for this competitive renewal, ATSDR will honor the current award through the expiration of the project period, subject to satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Equipment may be purchased with cooperative agreement funds; however, justification must be provided which should include a cost comparison of purchase versus lease options. All purchased equipment must be compatible with ATSDR equipment and shall be returned to ATSDR at the completion of the project.

Purpose

The primary purpose of this cooperative agreement program is to assist State health departments in developing a state-based surveillance system for monitoring hazardous substances emergency events to allow the State health department to better understand the public health impact of hazardous substances emergencies.

The objectives of the surveillance system are to:

1. Describe the distribution of hazardous substances emergencies within individual States;
2. Describe the type and cause of morbidity and mortality experienced by employees, first responders, and the general public as a result of selected hazardous substances emergencies;
3. Analyze and describe risk factors associated with the morbidity and mortality; and
4. Develop and propose strategies to reduce subsequent morbidity and mortality when comparable events occur in the future.

Program Requirements

All Hazardous Substances Emergency Event Surveillance (HSEES) will be performed in accordance with the methodology provided in the HSEES protocol. The protocol was developed to meet the objectives outlined under Purpose. A copy of the protocol will be provided in the application kit. For purposes of this program, the following criteria define an emergency event:

1. An uncontrolled or illegal release or threatened release of one or more hazardous substances (**NOTE:** The substances that are actually released or threatened to be released include all hazardous substances *except* petroleum products), and
2. The quantity of the hazardous substances which are released, or are threatened to be released, need (or would need) to be removed, cleaned up, or neutralized according to Federal, State, or local law; or
3. There is only a threatened release of hazardous substances, but this threat leads to an action (e.g., an evacuation) that can potentially impact the health of employees, responders, or the general public. This action makes the event eligible for inclusion into the surveillance system, even though the hazardous substances are not released.

A hazardous substance includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term "hazardous substance" does not include petroleum products, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a "hazardous substance."

To achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop a mechanism that ensures that the State health department is notified of hazardous substances emergency events in a timely fashion. This should include negotiating formal or informal agreements with all State agencies that are normally notified when hazardous substances emergencies have occurred. These State agencies should include, but not be limited to, State police, fire departments, environmental agencies, and various offices of emergency government.
2. Investigate the emergency event by gathering and entering the information obtained from all sources into the HSEES tracking system. Sources may include, but not be limited to, those agencies mentioned in A.1., and other relevant Federal, State, local, and private agencies in keeping with the surveillance protocol.
3. Establish and maintain appropriate procedures to ensure the timely gathering and entering the information into a database as prescribed by the HSEES protocol.

B. ATSDR Activities

1. Assist recipients in acquiring appropriate information for performance of HSEES and evaluating the completeness and quality of relevant information.
2. Provide prototype information gathering instrument.
3. Assist recipients in establishing and maintaining appropriate and timely schedules for the HSEES surveillance process.
4. Assist recipients in selecting training that will be useful in maintaining the surveillance system.

5. Analyze environmental and/or biological results for specific situations in which ATSDR has concerns.

6. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Review Criteria for States New to HSEES

1. *Appropriateness and Knowledge of Surveillance System—25%*

Demonstrate a need for such a surveillance system within their State. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

2. *Proposed Methodology—25%*

Applicant must demonstrate experience in, or an ability to develop, implement, maintain, and evaluate surveillance systems in accordance with the HSEES Protocol.

3. *Capability and Coordination Efforts—20%*

Demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. This is necessary to assure that State health departments are notified of all hazardous substances emergencies.

4. *Quality of Information Collection—20%*

Applicant should describe experience in collaborative projects for which the agency has had the responsibility collecting information in a consistent format. Examples include surveillance projects, surveys, and prospective or retrospective hypothesis-testing studies. The timely submission of data for analysis is critical in ensuring the success of this surveillance. Accordingly, the applicant must demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

5. *Program Personnel—10%*

Demonstrate that the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologist, data management staff, environmental health scientists, emergency response personnel, computer specialists), and computer hardware.

6. *Program Budget—(Not scored)*

Budget must be reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

B. Review Criteria for States with Existing HSEES

1. *Appropriateness and Knowledge of Surveillance System—25%*

Applicant must demonstrate experience in collecting emergency event surveillance information within the State. This should include, but not be limited to, an assessment of the extent of hazardous substances emergencies and/or the morbidity and mortality associated with these events. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

2. *Proposed Methodology—25%*

Applicant must demonstrate experience in HSEES. This should include the development, implementation, and evaluation of an HSEES system in accordance with the surveillance Protocol.

3. *Capability and Coordination Efforts—20%*

Applicant must demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. This is necessary to assure that State health departments are notified of all hazardous substances emergencies.

4. *Quality of Information Collection—20%*

Applicant should describe previous experience in HSEES systems, including collecting information for which the organization is responsible in a consistent format. Of critical importance to the success of the surveillance project is the timely submission of data for analysis. The applicant *must* demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

5. *Program Personnel—10%*

Demonstrate that the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologist, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

6. *Program Budget—(Not scored)*

Budget must be reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

C. Review of Noncompeting Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Applicants must demonstrate the abilities described earlier in the Program Requirements section of this announcement. Priority will be given for the following:

1. Geographic distribution across the entire United States.

2. Representation from both agricultural and industrial States.

3. Electronic data management/transfer capabilities, and in-kind technical support.

Public Comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early

as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs including their names, addresses, and telephone numbers is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E-13, Atlanta, Georgia 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB clearance has been obtained for the Hazardous Substances Emergency Events Data Collection Form OMB Number 0923-008, expiration date June 30, 1995.

Application Submission Deadline

The original and two copies of the application (PHS Form 5161-1) should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E-13, Atlanta, Georgia 30305, on or before July 21, 1994. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet the criteria in A.1. or A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E-13, Atlanta, Georgia 30305, telephone (404) 842-6797. Programmatic assistance may be obtained from Dr. Wendy Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E-31, Atlanta, Georgia 30333, telephone (404) 639-6203.

Please refer to Announcement Number 431 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 27, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94-13492 Filed 6-2-94; 8:45 am]

BILLING CODE 4163-70-P

Centers for Disease Control and Prevention

[CDC-#471]

Announcement of Cooperative Agreement to National Association of People With AIDS (NAPWA)

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement program with the National Association of People With AIDS (NAPWA) to continue the human immunodeficiency virus (HIV) prevention and education programs and technical assistance being provided to HIV infected and affected persons and the organizations that serve them. Approximately $350,000 is available in FY 1994 to support this project. It is expected that the award will be made on or about September 25, 1994, for a 12-month budget period within a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to assist, collaboratively with NAPWA, in strengthening effective HIV/AIDS prevention education programs at all levels throughout the United States and its territories; to prevent HIV transmission and effect, maintain, measure, and evaluate behavioral change among individuals whose behavior places them at risk of HIV infection; to increase access to prevention and early intervention services for HIV-infected persons in order to reduce risks of further transmission and to maintain the health of asymptomatic clients; and to increase collaboration and support among agencies, organizations, groups, and constituencies providing HIV prevention services.

CDC will collaborate in providing consultation and technical assistance in planning, operating, and evaluating program activities. Specifically, CDC will work with NAPWA to: (1) Facilitate collaboration with State and local health departments and other national and

community organizations to reach persons most at risk for HIV infection; (2) assist in the identification of HIV prevention education programs, policies, practices, and procedures that have been demonstrated to be effective; (3) facilitate efforts in the provision of technical assistance and training to organizations that are involved in HIV prevention community planning; (4) assist with the development of plans to evaluate all program activities and to interpret evaluation findings.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS). (To order a copy of "Healthy People 2000," see the Section entitled "Where to Obtain Additional Information.")

Authority

This program is authorized under the Public Health Service Act, section 301(a), (42 U.S.C. 241(a)), as amended; and Section 317(a), (42 U.S.C. 247b(a)), as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the National Association of People with AIDS (NAPWA) for the continued support of this project. No other applications are solicited or will be accepted.

Eligibility is limited to NAPWA because it is the only organization incorporated by people with HIV/AIDS, provides HIV prevention technical assistance and education for infected and affected people, and serves as a national prevention and education resource to all communities affected by HIV/AIDS. No other organization has this unique role, credibility, and established rapport with affected communities and the public at large, or the necessary national HIV program experience to effectively carry out the activities of this program.

Executive Order 12372 Review

The application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Non-Governmental Organizations.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 471 and contact Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–15, Atlanta, Georgia 30305, telephone (404) 842–6817.

Programmatic technical assistance may be obtained from Janet Cleveland, Division of STD/HIV Prevention, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Mailstop E-O2, Atlanta, Georgia 30333, telephone (404) 639–8360.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13493 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–18–P

[CDC–464]

Announcement of a Cooperative Agreement to the World Health Organization

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of funds for fiscal year (FY) 1994 for a sole source cooperative agreement with the World Health Organization (WHO) to conduct polio surveillance, provide technical assistance in developing a laboratory network, provide programmatic assistance to carry out operational and applied research, and to provide oral polio vaccine for supplemental immunization activities for the global initiative to eradicate polio by the year 2000. Approximately $1.2 to $1.6 million will be available in FY 1994 to support this project. It is expected the award will begin on July 1, 1994, for a 12-month budget period within a 3-year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to support the polio eradication initiative by providing technical, laboratory, programmatic consultants, operational and applied research, oral polio vaccine, and other services, as needed, to the governments of polio endemic countries. Specific activities should be in the areas of polio surveillance to define and assess the polio endemic countries, including surveillance for acute flaccid paralysis, development of a laboratory network for poliovirus isolation in developing countries, and assistance to foreign governments in planning and implementing national immunization days and other polio eradication activities.

CDC will collaborate by providing (1) technical assistance to WHO in support of activities implemented under this agreement; (2) programmatic support to national governments for planning, implementing, and evaluating polio eradication activities; (3) technical training, support, and consultation to expert staff hired by WHO to assist in the polio eradication initiative; (4) expertise for the surveillance to assess, define, and prioritize the assistance needs of polio endemic countries and assist in the development of a laboratory network for poliovirus isolation in developing countries; and (5) other technical assistance in support of this project, as needed.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the Section "Where To Obtain Additional Information.")

Authority

This program is authorized under sections 301 and 307 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 242*l*, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission of promoting the protection and advancement of an individual's physical and mental health.

Eligible Applicant

Eligibility for assistance is limited to the World Health Organization for this project. No other applications are solicited. The program announcement and application kit have been sent to WHO.

WHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

A. WHO has the lead responsibility among the United Nations organizations for implementing the World Health Assembly resolution of 1988 calling for the global eradication of polio by the year 2000. WHO is the only organization with a worldwide mandate for the control and prevention of vaccine preventable diseases.

B. The proposed program is strongly supportive of and directly related to the achievement of WHO and CDC/National Immunization Program objectives for the control and prevention of vaccine preventable diseases.

C. WHO, together with UNICEF, the Pan American Health Organization, Rotary International, and CDC, is a member of the Polio Eradication Network, an organization formed to increase support and visibility for the polio eradication initiative.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

Other Requirements

Human Subjects

If any of the proposed projects involve research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 464 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-09, Atlanta, GA 30305, telephone (404) 842-6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 27, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-13494 Filed 6-2-94; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Drug Discovery Subcommittee Meeting of the National Task Force on Aids Drug Development

Date, time, and place. June 21, 1994, 8:30 a.m., Parklawn Bldg., conference rm. I, 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open subcommittee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Jean H. Mckay, Office of AIDS and Special Health Issues (HF-12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0104.

General functions of the subcommittee. The National Task Force on AIDS Drug Development identifies any barriers and provides creative options for the rapid development and evaluation of treatments for HIV infection and its sequelae. It also advises on issues related to such barriers and provides options for the elimination of these barriers.

Open subcommittee discussion. The subcommittee will present, hear, and discuss issues on the barriers to AIDS drug discovery from the perspective of the subcommittee members, members of the Federal Government, and the public.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Task Force. Those desiring to make formal presentations should notify the contact person before June 7, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 27, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–13468 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0194]

Apothecon, et al.; Withdrawal of Approval of Six Abbreviated Antibiotic Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of six abbreviated antibiotic applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
61–911.	Kanamycin Sulfate Capsules, U.S.P. 500 miligrams (mg).	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.
61–981.	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment, U.S.P.	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
62–271	Cloxacillin Sodium Capsules, USP, 250 mg.	Apothecon.
62–688.	Sterile Cefazolin Sodium, U.S.P.	Fujisawa USA, Inc., Three Parkway North, 3d floor, Deerfield, IL 60015–2548.
62–957.	Erythromycin Topical Solution, USP, 2%.	Barre-National, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
63–010.	Nystatin and Triamcinolone Acetonide Cream, USP.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective July 5, 1994.

Dated: May 24, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–13593 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–P

Health Resources and Services Administration

RIN: 0905–ZA65

Program Announcement and Proposed Project Requirements and Review Criteria for Grants for Chiropractic Demonstration Projects for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 grants for Chiropractic Demonstration Projects under the authority of section 782, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed project requirements and review criteria.

Approximately $730,000 will be available in FY 1994 for this program. It is anticipated that $730,000 will be available to support 3 to 4 competing awards averaging $182,500 to 243,333.

Purpose

Section 782 of the Public Health Service Act authorizes the Secretary to carry out demonstration projects in

which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

The period of Federal support will not exceed 3 years.

Eligibility

Entities eligible to apply for these grants are public or private nonprofit schools, colleges, and universities of chiropractic. Each applicant must enter into a formal agreement as necessary to ensure that a school of allopathic or osteopathic medicine will participate in the project.

Proposed Project Requirements

The following project requirements are proposed:

1. The project must address the identification and treatment of spinal and/or lower-back conditions.
2. The project must represent collaborative efforts between schools of chiropractic and schools of allopathic or osteopathic medicine.
3. Each project must include a strong research protocol which will result in a significant expansion of documented research in the area addressed and which is suitable for publication in refereed health professions journals, including research-oriented publications.
4. The project must include an explicit strategy for case-finding and a strategy for making direct comparisons to other forms of treatment. The results must be generalizable to patients cared for in clinical practices addressing spinal and/or lower-back conditions.
5. Whenever feasible, minorities and women should be included in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Proposed Review Criteria

It is proposed that the review of applications will take into consideration the following criteria and the quality of the supporting documentation for:

(1) The strength of the rationale for the project;

(2) The quality and clarity of the objectives to be achieved in relation to the stated statutory purposes of the program and the potential of the project for meeting them;

(3) The strength of the applicant's institutional background in chiropractic training and research;

(4) The competency of all faculty, both chiropractic and allopathic or osteopathic medicine, to be involved in the project, including past experience in chiropractic and/or chiropractic research and allopathic or osteopathic research;

(5) The proposed methodology to be used in carrying out the goals and objectives of the project, including those pertaining to research and its outcomes;

(6) The appropriateness of timelines to be used in achieving the project's goals and objectives;

(7) The strength of the proposed evaluation methodology to be used in evaluating the accomplishments of the project, including those pertinent to research;

(8) The strength of the evidence of the applicant institution's commitment, including letters of support, to carrying out the project successfully and the institutional commitment of the allopathic or osteopathic school of medicine collaborating in the project;

(9) The suitability and availability of all proposed facilities and resources to be used in carrying out the project;

(10) The appropriateness of the proposed budget and fiscal plan for carrying out the project and the administrative and management capability of the applicant to implement the project in a cost-effective manner; and

(11) The documentation, terms, and specificity of a formal agreement with a school of allopathic or osteopathic medicine for its collaboration in carrying out the goals, objectives, and evaluation of the project.

The peer review group which reviews applications for this program will include no fewer than two, and no more than three, chiropractors.

Additional Information

Interested persons are invited to comment on the proposed project requirements and review criteria. The comment period is 30 days. All comments received on or before July 5, 1994 will be considered before the final project requirements and review criteria are established. Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Brenda Selser, Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–6960 FAX: (301) 443–6343 Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mr. Fred Paavola, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857; telephone : (301) 443–6763 FAX: (301) 443–1164.

The standard application form PHS 398, Competing Training Grant Application and General Instructions will be used for this program. This form has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0925–0001.

The deadline date for receipt of applications is July 8, 1994. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Chiropractic Demonstration Projects, is listed at 93.212 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 12, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–13571 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Consensus Development Conference on Optimal Calcium Intake

Notice is hereby given of the NIH Consensus Development Conference on "Optimal Calcium Intake," which will be held June 6–8, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. on June 6 and 7 and at 9 a.m. on June 8.

Over the past decade, both the general public and scientists have been exposed to a great deal of literature about the value of ensuring an adequate calcium intake throughout life. A number of articles in the medical literature have addressed the role of calcium intake in the prevention of disorders including osteoporosis and other bone diseases, colon cancer, and high blood pressure (hypertension) including preeclampsia, a hypertensive disorder of pregnancy. Results of one recent study indicated that high calcium intake can decrease the risk of kidney stones—a somewhat surprising conclusion since high dietary calcium intake had been strongly suspected to increase the risk of kidney stones.

Osteoporosis affects more than 25 million people in the United States and is the major underlying cause of bone fractures in postmenopausal women and the elderly. Two important factors that influence whether osteoporosis occurs are the peak bone density (or bone mass) attained in early life (by about age 30) and the rate at which bones is lost in later life. Calcium intake is thought to help build denser, stronger bones in early life and to slow the rate of bone loss with age.

Results from several studies reported in the recent medical literature suggest that increased calcium intake is beneficial for bone health in people in different age groups, from children to the very elderly. The results of this research and studies on other diseases indicate that the optimal level of calcium intake may be greater than the amount consumed by a majority of the American people. This conference will discuss and thoroughly evaluate the information available on calcium intake and disease prevention.

Optimal calcium intake may vary according to the disease being considered, and may also vary according to a person's age, sex, and ethnicity. Optimal calcium intake may be achieved by diet, calcium supplements, or calcium-fortified foods, or by various combinations of these. In addition, various cofactors play a role in achieving optimal calcium intake. These include both factors such as vitamin D, which is needed for optimal calcium absorption, and factors that can negatively influence calcium availability, such as certain medications or foods. The purpose of this NIH consensus conference is to evaluate the available data on optimal calcium intake and health status. Conference participants will include specialists in many different fields, including osteoporosis and bone health, oncology, hypertension, human nutrition, and food fortification and labeling, as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What is the optimal amount of calcium intake?
- What are the important cofactors for achieving optimal calcium intake?
- What are the risk factors associated with different levels of calcium intake?
- What are the best ways to attain optimal calcium intake?
- What public health strategies are available and needed to implement optimal calcium intake?
- What are the recommendations for future research on calcium?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Advance information on the conference program and conference registration materials may be obtained from: Ann Besignano, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning June 8, 1994, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: May 20, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–13483 Filed 6–2–94; 8:45 am]

BILLING CODE 4140–01–M

Meeting of Panel/Request for Public Comment

The fifth, and probably final, meeting of the National Institutes of Health (NIH) Human Embryo Research Panel will be held June 21–22 from 9 a.m. to 5 p.m. each day at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland. The Panel is a group of special consultants to the Advisory Committee to the Director (ACD), NIH, established to recommend guidelines for Federal funding of research involving the *ex utero* human embryo resulting from *in vitro* fertilization or other sources. At the June meeting, the Panel will work toward the resolution of outstanding issues and review a draft report of its findings and conclusions.

Background

Research involving the *ex utero* human embryo has many potential scientific and therapeutic benefits. Among the most direct and immediate possible gains are the treatment of infertility and the advancement of preimplantation diagnosis of genetic and chromosomal abnormalities. Other research focusing on the processes of fertilization and implantation could clarify the causes of infertility. Studies of normal and abnormal early

embryonic development could enhance understanding of the causes of pregnancy loss, birth defects, and the mechanisms of uncontrolled cell growth that occur in cancer. Other research efforts could be applied to the development of novel contraceptives. In the longer term, research on embryonic stem cells could have therapeutic applications in a broad range of areas, including bone marrow transplantation, repair of damaged tissues, and treatment of degenerative diseases of the nervous and muscular systems.

The NIH has received a number of applications for support of research involving the *ex utero* human embryo as well as research involving parthenogenesis (the initiation of development of an ovum without sperm). Before proceeding with the consideration of specific human embryo research proposals for funding, the NIH must address the profound moral and ethical issues raised by the use of human embryos in research and develop guidelines to govern the review and conduct of Federally-funded research. The Human Embryo Research Panel was established to assist the NIH in this effort. The Panel's charge is to consider various areas of research involving the *ex utero* human embryo and provide advice as to those areas it views to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For those areas of research considered acceptable for Federal funding, the Panel will recommend specific guidelines for the review and conduct of this research. Issues related to human germ-line gene modification are not within the Panel's purview. The Panel's final report will be presented to the ACD for review.

During part of its first and second meeting, the Panel reviewed the wide range of scientific and human health benefits that could result from governmental support of research involving the *ex utero* human embryo. At the third meeting, Panel deliberations focused on issues related to the moral status of the human embryo and acceptability of areas of *ex utero* human embryo research; ethically acceptable sources of human embryos and oocytes, including informed consent requirements, issues raised by compensation of sperm/egg providers, and concerns regarding commercialization; and, appropriate mechanisms/levels of review of research proposals involving the *ex utero* human embryo. The fourth meeting of the Panel was devoted to the consideration of a preliminary draft of proposed guidelines.

Public Comment Process

The NIH continues to seek public comment on these and other issues raised by Federal funding of human embryo research and encourages interested individuals and organizations to share with the Panel their views and perspectives on these important matters. Those who wish to submit written comments of any length should forward these to Steven Muller, Ph.D., Chair, NIH Human Embryo Research Panel, c/o National Institutes of Health, 9000 Rockville Pike, Building #1, room 218, Bethesda, Maryland 20892.

Each meeting of the Panel has also provided an opportunity for interested individuals and organizations to make brief oral presentations to the Panel. To register to make an oral statement before the Panel, individuals and organizations should contact Ms. Peggy Schnoor at the NIH by telephoning 301–496–1454 or by sending a facsimile message to 301–402–0280 or 301–402–1759. Oral statements must not exceed five minutes in length, and a copy of the remarks should be forwarded to the above address one week in advance of the scheduled presentation date. Opportunities to present statements are limited and will be determined by the order in which requests are received.

The NIH will endeavor to provide seating for all members of the public who wish to attend the meetings. To ensure that adequate seating is available for the public, individuals interested in attending the meeting are asked to notify the NIH by using the telephone or facsimile numbers listed above. Individuals who require special accommodations are also asked to contact Ms. Schnoor at the above number. General questions about the Panel or future meetings should also be directed to Ms. Schnoor.

Dated: May 20, 1994.

Ruth L. Kirschstein, M.D.,

Deputy Director, NIH.

[FR Doc. 94–13484 Filed 6–2–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Inclusion of Outpatient Hospital Facilities

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(4) lists the entities eligible to receive discount outpatient drug pricing (*i.e.*, certain disproportionate share hospitals (DSHs) and PHS grantees). The definition of a disproportionate share hospital found in section 340B(a)(4)(L) provides criteria to determine which such hospitals are eligible to participate in the program. However, the definition does not include criteria to determine which outpatient facilities (including off-site or satellite clinics) working in conjunction with the eligible hospital would be considered part of the hospital for purposes of eligibility for section 340B drug discounts. The Office of Drug Pricing, which administers this program with PHS, is proposing certain procedures to determine which outpatient hospital facilities are included as part of an eligible disproportionate share hospital.

DATES: The public is invited to submit comments on the proposed procedures by July 5, 1994. Subject to consideration of the comments submitted, the Department intends to publish a final notice regarding these procedures.

ADDRESSES: Submit comments to Ms. Alvarez at the address listed below.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Chief Pharmacy Officer, Attn: Drug Pricing Program, Bureau of Primary Health Care, East West Towers rm. 10–3A1, Bethesda, MD 20814, Tel: (301) 594–4354.

SUPPLEMENTARY INFORMATION: Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive the section 340B discount pricing. Section 340B(a)(4)(L)[1] describes

[1] Section 340B(a)(4)(L) of the PHS Act defines as a covered entity—

"A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) [42 U.S.C. section 1396ww(d)(1)(B)] that—(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42

Continued

a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intended that this narrow definition be used to identify Medicare disproportionate share hospitals which are eligible for section 340B drug discounts, we do not believe it is reasonable to use this same definition to limit where the section 340B outpatient drug can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services other than traditional inpatient hospital services through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a more inclusive interpretation of "hospital" is needed.

The Office of Drug Pricing Program is proposing to recognize as part of an eligible DSH outpatient facilities (including off-site and satellite clinics) which meet the following standard:

The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report.

For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are listed on the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using a different Medicare number (not under the single hospital Medicare provider number) would not be eligible for this benefit.

This test, using the single Medicare provider number, is proposed for three reasons. First, Congress referred to section 1886 of the Social Security Act, part of the Medicare statute, for the definition of a DSH in section 340B(a)(4)(L) of the PHS Act. We believe, therefore, that it is reasonable to utilize existing Medicare rules to determine eligibility for the drug discount program. The proposed Medicare cost report test was developed by Medicare officials and is used, in part, to determine whether a facility is part of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

Second, the relative administrative burden of the proposed test (*i.e.*, obtaining sufficient documentation to verify the inclusion of these off-site facilities) should be minimal. Hospitals seeking Medicare reimbursement are required to submit annual cost reports including all hospital units (*e.g.*, on site and off-site clinics); therefore, the information necessary to determine facility eligibility is available and needs no further analysis by the Office of Drug Pricing.

Third, the test incorporates criteria (*i.e.*, the Medicare cost report) that form an independent and objective basis upon which to determine eligibility. Therefore, this test should provide fair and easy administration.

If DSHs have difficulty accessing PHS pricing for eligible outpatient clinics, they should contact the Office of Drug Pricing (not HCFA) for assistance. If manufacturers have questions concerning the eligibility of certain DSH outpatient clinics, they should also contact the Office of Drug Pricing for a determination of eligibility.

Dated: May 27, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–13463 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–15–P

U.S.C.A. section 1395, *et seq.*] or eligible for assistance under the State plan under this title; (ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) [42 U.S.C.A. section 1395ww(d)(5)(F)] greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C.A. 1395ww (d)(5)(F)(i)(II)]; and (iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement."

The Health Care Financing Administration (HCFA) submitted to the Office of Drug Pricing a list of hospitals that met the first two requirements (*i.e.*, 340B(a)(4)(L)(i) and (ii)). HCFA will update this list periodically.

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery,

AL 36103, 800–541–4931/205–263–5745.
Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257.
American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900.
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119–5412, 702–733–7866.
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016.
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900.
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810.
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917.
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984.
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263.
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093.
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.).
Damon/MetPath, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories).
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.
Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317.
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468.
Drug Labs of Texas, 15201 I–10 East, suite 125, Channelview, TX 77530, 713–457–3784.
DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc.).
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.
Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, suite 308, Pompano Beach, FL 33062, 305–946–4324.
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93).
EXPRESSLAB, INC., 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group).
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267.
Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories).
HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories).
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713–793–6080.
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051.
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961.
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835.
Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.).
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515.
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699–0008, 419–381–5213.
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400.
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466.
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587.
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199.
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888.
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000.
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293.
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.).
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab).
National Health Laboratories Incorporated, 5601 Oberlin Drive, suite 100, San Diego, CA 92121, 619–455–1221.
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894.
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511.
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100.
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250.
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.
Occupational Toxicology Laboratories, Inc., 2002 20th Street, suite 204A, Kenner, LA 70062, 504–465–0751.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 210–493–3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986.
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940.
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Road, suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92).
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in May.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–13551 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–86]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing and speech impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess of surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2508–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties

available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the FEDERAL REGISTER, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Correction: On April 1, 1994, at 59 FR 15420, property Numbers 219330315–219330317, Army Wherry Family Housing, Stewart Gardens, New York, inadvertently published for off-site use only. The properties are for on-site use and are scheduled to be vacated in the Spring of 1996. The properties include 23 residential apartment buildings, 5 detached garages, and 30 storage sheds.

Dated: May 27, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/03/94

Suitable/Available Properties

Buildings (by State)

Arkansas

818 (Capehart) Family Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210040
Status: Pryor Amendment
Base closure number of Units: 818
Comment: 2,522 to 3,008 sq. ft., 1 story duplexes, wood w/brick veneer fronts, attached carports and storage sheds, playground, 2, 3 & 4 bedroom units.

10 (Capehart) SF Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210041
Status: Pryor Amendment
Base closure number of Units: 10
Comment: 1,898 to 2,522 sq. ft., 1 story wood w/brick veneer fronts, playground, 4 & 5 bedrooms.

100 (Appropriated) Family Hsg.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210042
Status: Pryor Amendment
Base closure number of Units: 100
Comment: 5,839 sq. ft., 2 story wood w/brick veneer fronts, 4-plex housing bldgs., playground, 4 bedrooms.

13 Security Related Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210044
Status: Pryor Amendment
Base closure number of Units: 13
Comment: 30 to 2,400 sq. ft., 1 story metal, concrete block or wood frame, includes traffic checkhouses, kennels, guard towers, alert shelter.

26 Office/Admin. Buildings
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210045
Status: Pryor Amendment
Base closure number of Units: 26
Comment: 188 to 49,000 sq. ft., concrete block, metal, shingle or masonry frame, 1 and 2 story, a few needs rehab.

8 Indoor Recreation Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210046
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 5,411 to 30,627 sq. ft., 1 story, concrete block, masonry or metal/brick frame.

Bldg. 701A/B
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210048
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood/brick veneer, most recent use—temporary living facility.

Bldg. 702
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210049
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 22,655 sq. ft., 2 story wood frame, most recent use—billeting.

Bldg. 703
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210050
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood frame, most recent use—temporary living facility.

Bldg. 704
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210051
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood frame, most recent use—temporary living facility.

Bldg. 608, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210052
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame.

Bldg. 609, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210053
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame, heat/air cond. originates from bldg. 617.

Bldg. 619, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000

Landholding Agency: Air Force—BC
Property Number: 199210054
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame, heat/air cond. originates from bldg. 617.

Bldg. 620, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force–BC
Property Number: 199210055
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame.

36 Warehouses/Multi-use Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210056
Status: Pryor Amendment
Base closure number of Units: 36
Comment: 64 to 45,960 sq. ft., 1 and 2 story, metal, concrete block, shingle, wood, plywood frame.

Bldg. 650, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210057
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 54,089 sq. ft., 1 story concrete block frame, most recent use—composite medical.

Bldg. 234, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210058
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 5,249 sq. ft., 1 story concrete block frame, most recent use—dental clinic.

Bldg. 436, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210059
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 1,084 sq. ft., 1 story concrete block frame, most recent use—animal clinic.

Bldg. 502, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210060
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,007 sq. ft., 1 story concrete block frame.

Bldg. 527, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210061
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 2,098 sq ft., 1 story hadite block frame.

Bldg. 558, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210062
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 8,365 sq. ft., 1 story brick frame.

Bldg. 160
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210063
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 4,299 sq. ft., 1 story enamel porcelain panels, most recent use—exchange service station.

Bldg. 552
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210064
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 32,925 sq. ft., 1 story concrete block, most recent use—exchange sales store.

Bldg. 560
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210065
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,370 sq. ft., 1 story wood frame, most recent use—base packaging store.

9 Airfield Related Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210066
Status: Pryor Amendment
Base closure: Number of Units: 9
Comment: 96 to 49,000 sq. ft., shingle, metal or concrete block frame.

3 Vehicle Maintenance Fac.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210068
Status: Pryor Amendment
Base closure: Number of Units: 3
Comment: 2,032 to 29,350 sq. ft., metal frame, 1 story.

33 Fuels/Related Storage Fac.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210069
Status: Pryor Amendment
Base closure: Number of Units: 33
Comment: Steel, fiberglass or porcelain type, most recent use—storage.

4 Hazardous Storage Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210070
Status: Pryor Amendment
Base closure: Number of Units: 4
Comment: 96 to 3,000 sq. ft., 1 story metal frame.

10 Munitions Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210071
Status: Pryor Amendment
Base closure: Number of Units: 10
Comment: 412 to 4,864 sq. ft., concrete block frame, most recent use—storage igloos.

Bldg. 435
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210072
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,195 sq. ft., 1 story concrete block, most recent use—cold storage.

Bldg. 556
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210073
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 38,575 sq. ft., 1 story concrete block/metal frame, most recent use—commissary.

Bldg. 100, Fire Station
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210074
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 15,717 sq. ft., concrete masonry/asbestos cement shingles.

Bldg. 525, Chapel
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210075
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 17,602 sq. ft., 1 story frame with brick veneer.

Bldg. 805
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210076
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 4,200 sq. ft., 1 story brick and metal panel, most recent use—precision measurement equipment lab.

Bldg. 150
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210077
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,775 sq. ft., 1 story concrete block, most recent use—audio-visual photo lab.

Bldg. 517
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210078
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2367 sq. ft., 1 story concrete block, most recent use bank, lease restrictions

California

15 Office/Admin. Buildings

Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210022
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 1, 2 and 3-story buildings, presence of asbestos.

9 Recreation Facilities
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210023
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: Recreation facilities including theater, gym, library, bowling alley, arts and crafts/youth centers, etc., presence of asbestos.

12 Maint. & Engineering Bldgs.
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210025
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 1-story structures including storage, shop and maintenance buildings, presence of asbestos.

6 Training Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210026
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1 to 2-story concrete, wood and metal classroom/education bldgs., presence of asbestos.

5 Store & Service Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210027
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1-story stores, service station, exchange and cold storage bldgs., presence of asbestos.

18 Storage Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210032
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 1-story, metal, steel, wood and concrete storage bldgs. or sheds, presence of asbestos.

9 Warehouses
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210033
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1 to 2-story warehouses, presence of asbestos.

2 Vehicle Shops
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210034
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1-story concrete block or steel shops, presence of asbestos.

5 Hazardous Storage Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210038
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1-story metal storage structures.

314 Family Housing
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420038
Status: Pryor Amendment
Base closure Number of Units: 314
Comment: Various sq. ft., 2, 4, 6 and 8-unit bldgs., totalling 1,444 dwelling units, wood or wood/stucco frame, possible asbestos.

36 Dormitory Style Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420039
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: Various sq. ft., wood or concrete frame, 1 and 2 story, possible asbestos, includes dorms, lodges, quarters or lounges.

23 Office/Admin Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420040
Status: Pryor Amendment
Base closure Number of Units: 23
Comment: 200–56,600 sq. ft., one story wood or concrete block structures, possible asbestos.

15 Recreational Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420041
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 288–23,000 sq. ft., one story wood or concrete structures, possible asbestos, includes rec. centers, theater, gym, bowling centers, youth centers, pool, bathhouses.

4 Training Facilities
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420042
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: Various sq. ft., one story wood or concrete structures, possible asbestos.

6 Stores/Services
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420043
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: Various sq. ft., one story wood or concrete structures, possible asbestos.

5 Warehouses
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420044
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1124–70,000 sq. ft., one story wood or concrete structures, possible asbestos.

18 Maintenance/Engineer Facs.
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420045
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 200–17,000 sq. ft., one story wood or concrete structures, possible asbestos.

6 Miscellaneous Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420046
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 3038–19,000 sq. ft., one story wood or concrete structures, possible asbestos, includes child care centers, mess & dining halls.

Bldg. 1155
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420047
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 147,000 sq. ft., 3 story concrete block structure, possible asbestos, most recent use—hospital.

8 Utility Support Facilities
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420002
Status: Pryor Amendment
Base closure Number of Units: 8
Comment: 67 to 2,454 sq. ft., metal or concrete frame, subject to periodic flooding, located on airfield, incs. pump stations, generator, electric power stations, sched to be vacated 9/95

2 Shops
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420003
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4,020 and 8,836 sq. ft., presence of asbestos, located adjacent to airfield, subject to periodic flooding, inc. bldgs. 94 & 140, needs rehab, scheduled to be vacated 9/95.

5 Storage Facilities
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420004

Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 464 to 14,960 sq. ft., inc. bldgs. 26, 82, 84, 87 & 90, some need repairs, pres. of asbestos, subject to periodic flooding, located adjacent to airfield, sched to be vacated 9/95.

Bldg. 86
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420005
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 68,811 sq. ft., 2 story, pres. of asbestos, adjacent to airfield, subject to periodic flooding, most recent use maintenance facility, scheduled to be vacated 9/95.

Bldg. 92
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE—BC
Property Number: 329420006
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,000 sq. ft., metal frame, needs rehab, adjacent to airfield, subject to periodic flooding, most recent use—emergency response station, scheduled to be vacated 9/95.

Bldg. 138
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE—BC
Property Number: 329420007
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 15,393 sq. ft., wood frame, needs rehab, pres. of asbestos, subject to periodic flooding, most recent use—readiness crew bldg., scheduled to be vacated 9/95.

600 Units - Housing
Roosevelt Terrace Military Family Housing
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94590–
Location: Sears Point Rd., Sacramento St., & Selfridge St.
Landholding Agency: Navy Base Close
Property Number: 789420018
Status: Pryor Amendment
Base closure Number of Units: 600
Comment: 50 houses with 12 units each totaling 600 units, 5,130 sq. ft. each, 2-story concrete, scheduled to be vacated 10/94.

Bldg. 51A.
Roosevelt Terrace Military Family Housing
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94590–
Location: Sears Point Rd., Sacramento St., & Selfridge St.
Landholding Agency: Navy Base Close
Property Number: 789420019
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,200 sq. ft., 1-story, metal frame, most recent use convenience store, scheduled to be vacated 10/94.

Colorado

13 Dormitories
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320010
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 4,382 to 188,923 sq. ft., brick or wood frame, 1, 2, or 3 story, poss. asbestos, some need rehab, incs. dorm housing, motels, ofcrs qtrs., hotel hsg., sched to be vacated 9/30/94.

6 Recreational Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320013
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: Brick, wood or cinderblock frame, some need rehab, possible asbestos, includes bowling alleys, swimming pools, museums, scheduled to be vacated 9/30/94.

15 Administration Bldgs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320014
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 1,143 to 300,000 sq. ft., wood, brick, metal or cinderblock frame, possible asbestos, some need rehab, incs. hdqtrs. bldgs., admin services, etc., sched. to be vacated 9/30/94.

6 Training Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320015
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1,026 to 97,442 sq. ft., brick, metal or cinderblock frame, 1 to 4 story, scheduled to be vacated 9/30/94.

9 Commercial Bldgs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320016
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 64 to 84,860 sq. ft., 1 & 2 story, some need rehab, possible asbestos, includes stores, gas station bldgs., chapels, scheduled to be vacated 9/30/94.

20 Industrial Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320017
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 757 to 37,832 sq. ft., metal, brick, wood or cinderblock, poss. asbestos, some need rehab, incs. vehicle maint., training aid, industrial bldgs., sched to be vacated 9/30/94.

36 Storage/Warehouses
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320018
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 169 to 50,363 sq. ft., wood, brick, metal or cinderblock frame, some need rehab, possible asbestos, scheduled to be vacated 9/30/94, inc. covered storage facilities.

Florida

3 Administrative/Support Bldgs
Naval Training Center
Area "C"
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420033
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 224 to 54,916 sq. ft., 1 story, incs. shipping/receiving fac, laundry and policy security, scheduled to be vacated 7/98.

18 Warehouses/Storage Facs.
Naval Training Center
Area "C"
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420034
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 800 to 9,963 sq. ft., 1 story, incs. cold storage, disposal scrap facilities, NTSC warehouses, scheduled to be vacated 7/98.

53 Family Housing/Multiplex
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420035
Status: Pryor Amendment
Base closure Number of Units: 53
Comment: Various sq. ft., 2 story, 711 series, scheduled to be vacated 10/98.

10 Operational/Admin Bldgs.
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420036
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 240 to 15,506 sq. ft., 1–2 story, incs. library/credit union, recruiters offices, hdqtrs. bldg., warehouse, admin offices, scheduled to be vacated 10/95.

11 Maintenance/Motor Pool Facs
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420039
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 100 to 3,312 sq. ft., 1–2 story, includes motor pool shops, storage, pest control facility, grounds maintenance, scheduled to be vacated 10/95.

34 Medical/Community Support
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420040
Status: Pryor Amendment
Base closure Number of Units: 34

Comment: Various sq. ft., 1–2 story, includes lodges, hobby shops, youth centers, gym, commissary, beauty/barber fac., child care center, theater, etc., scheduled to be vacated 10/95.

6 Barracks/Support Buildings
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420041
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 374 to 11,734 sq. ft., 1–2 story, includes barracks, public works bldg., storage, emergency service shop, scheduled to be vacated 10/95.

359 Capehart Duplex Housing
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420042
Status: Pryor Amendment
Base closure Number of Units: 359
Comment: Various sq. ft., permanent structures, 711 series, scheduled to be vacated 10/95.

8 Buildings - 600 Series
Naval Training Center
Herndon Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420043
Status: Pryor Amendment
Base closure Number of Units: 8
Comment: 1,960 to 80,210 sq. ft., 1–2 story, includes bldgs. 310 & 441, research labs, warehouse and administrative bldgs., scheduled to be vacated 3/95.

72 Barracks
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420044
Status: Pryor Amendment
Base closure Number of Units: 72
Comment: 2,121 to 10,9000 sq. ft., 1 & 3 story, includes enlisted quarters, recruitment barracks, laundry, billeting office, galleys, scheduled to be vacated 10/98.

5 Housing/Housing Support
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420045
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 2,121 to 2,524 sq. ft., 1 story, includes living quarters, wives club, 711 & 714 Series, scheduled to be vacated 10/98.

75 Personnel/Community Support
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420046
Status: Pryor Amendment
Base closure Number of Units: 75
Comment: Various sq. ft., 1–2 story, includes gate houses, reception center, bowling alley, hobby shops, credit union, picnic shelters, equipment storage, scheduled to be vacated 10/98. Bldgs. scheduled to be vacated 7/95 are: 102, 204, 206, 210, 212, 216, 218, 220, 222, 224, 226, 228, 232, 234, 238, 250, 251, 2541.

22 Administration Buildings
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420047
Status: Pryor Amendment
Base closure Number of Units: 22
Comment: 448 to 19,223 sq. ft., 1 story, includes ADP facility, MWR offices, post office, personnel safety, NFFE union, NTC hdqtrs., scheduled to be vacated 10/98.

20 Operational Trng/Fuel Facs.
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420048
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 128 to 160,500 sq. ft., 1–3 story, incs. fuel stations, photo lab, trng bldgs, conference facility, fireman apprentice training, nuclear field school, sched. to be vacated 10/98. Bldgs. sched. to be vacated 7/95 are: 200, 230, 255, 229, 306, 2816 & 2817. Bldgs. sched to be vacated 10/96 are: 303 & 4304.

10 Maintenance Facilities
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420049
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 168 to 32,292 sq. ft., 1 story, includes paint storage, public works shed & warehouse, locksmith & pest control facilities, scheduled to be vacated 10/98.

6 Storage/Medical Buildings
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420050
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 200 to 79,220 sq. ft., 1 & 3 story, incs. vet clinic, dental clinic, dispensary/dental clinic, etc., scheduled to be vacated 10/98. Bldg. 73 to be vacated 7/95.

Illinois

Training Facility
Chanute Air Force Base
Rantoul Co: Champaign IL 61868
Landholding Agency: Air Force—BC
Property Number: 199210146
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Building known as Smith Hall, possible asbestos.

Louisiana

Bldg. 500
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210092
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 13,658 sq. ft., 1 story masonry frame, presence of asbestos, most recent use—fire facility.

Bldg. 1801, Chapel
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210093
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 11,484 sq. ft., 1 story masonry frame.

36 Airfield Related Facilities
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210091
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 240 to 79,537 sq. ft., 1 and 2 story, block, metal, wood, concrete or masonry frame, presence of asbestos.

20 Shops and Maintenance
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210090
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 228 to 34,176 sq. ft., 1 story, block, metal or steel frame, presence of asbestos.

38 Storage/Warehouses
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210089
Status: Pryor Amendment
Base closure Number of Units: 38
Comment: 225 to 60,960 sq. ft., 1 story, wood, block, metal, brick or concrete frame, presence of asbestos.

6 Business/Commercial Bldgs.
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210088
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1,925 to 34,326 sq. ft., masonry frame, possible asbestos.

3 Hospital Related Facilities
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210087
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 1,128 to 108,155 sq. ft., metal or masonry frame, presence of asbestos, 1 and 3 story.

14 Education/Training Bldgs.
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210086
Status: Pryor Amendment
Base closure Number of Units: 14
Comment: 740 to 45,716 sq. ft., wood or msaonry frame, presence of asbestos, 1 and 2 story.

14 Dorms/Dining Rooms
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210085
Status: Pryor Amendment
Base closure Number of Units: 14
Comment: 3,902 to 25,715 sq. ft., brick or msaonry frame, presence of asbestos, 1, 2 and 3 story.

18 Recreation Facilities

England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210083
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 347 to 23,294 sq. ft., 1 and 2 story, most recent use—gym, theater, riding stables, bowling, swim bathhouse, presence of asbestos.

3 Office/Admin. Buildings
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210082
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 1,744 to 8,700 sq. ft., 1 and 2 story, wood, brick, block or masonry frame, presence of asbestos.

201 (Capehart) Family Housing
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210081
Status: Pryor Amendment
Base closure Number of Units: 201
Comment: 1,190 to 2,616 sq. ft., 1 story family residences, wood or masonry frame.

93 (Appropriated) Family Hsg.
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210080
Status: Pryor Amendment
Base closure Number of Units: 93
Comment: 2,054 to 6,701 sq. ft., 1 and 2 story family residences, masonry frame.

New York

43 Single Houses
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420015
Status: Pryor Amendment
Base closure Number of Units: 43
Comment: 43 houses, 1,160 sq. ft. to 1,610 sq. ft., 3 to 4 bedrooms, scheduled to be vacated 9/95.

70 Units—Duplex Housing
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420016
Status: Pryor Amendment
Base closure Number of Units: 70
Comment: 70 units of duplex housing, 1,160 sq. ft. to 1,610 sq. ft., 3 to 4 bedrooms, scheduled to be vacated 9/95.

Texas

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210108
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1,203 sq. ft., 1-story wood frame residences.

51 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210109
Status: Pryor Amendment
Base closure Number of Units: 51
Comment: 1,204 sq. ft., 1-story wood frame residences.

56 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210110
Status: Pryor Amendment
Base closure Number of Units: 56
Comment: 1,209 sq. ft., 1-story wood frame residences.

11 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210111
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 1,348 sq. ft., 1-story wood frame residences.

21 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210112
Status: Pryor Amendment
Base closure Number of Units: 21
Comment: 1,387 sq. ft., 1-story wood frame residences.

49 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210113
Status: Pryor Amendment
Base closure Number of Units: 49
Comment: 1,397 sq. ft., 1-story wood frame residences.

19 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210114
Status: Pryor Amendment
Base closure Number of Units: 19
Comment: 1,489 sq. ft., 1-story wood frame residences.

33 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210115
Status: Pryor Amendment
Base closure Number of Units: 33
Comment: 1,493 sq. ft., 1-story wood frame residences.

17 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210116
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: 1,581 sq. ft., 1-story wood frame residences.

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210117
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1,655 sq. ft., 1-story wood frame residences.

10 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210118
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 2,450 sq. ft., 1-story concrete residences.

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210119
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 2,450 sq. ft., 1-story concrete residences.

5 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210120
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 5,601 sq. ft., 2-story concrete residences.

12 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210121
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 5,601 sq. ft., 2-story concrete residences.

41 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210122
Status: Pryor Amendment
Base closure Number of Units: 41
Comment: 1-story brick and wood residences

Child Care Facility
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210125
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Concrete block or brick structure, 1–2 story.

5 Recreation Facilities
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force–BC
Property Number: 199210126
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: Concrete block, brick or wood structures, incs. golf course clubhouse, 3 maintenance bldgs. and stables.

15 Hazard. Stor./Igloo Bldgs.
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force–BC
Property Number: 199210137
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: Four metal & concrete block hazardous storage bldgs., and 11 concrete storage igloos.

9 Family Houses
Dallas Naval Air Station
Main Street
Duncanville Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420020
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1254–1550 sq. ft., 2 to 3 bedrooms, wood frame, possible asbestos/radon, scheduled to be vacated 10/95.

5 Housing/Dining Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420021
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 12,975–48872 sq. ft., 1 to 3-story, troop facilities, shallow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

13 Administrative Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420022
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 288–18,899 sq. ft., 1 to 2-story, presence of asbestos, scheduled to be vacated 10/95.

18 Comm. Support Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420023
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 30–43,428 sq. ft., including child care center, stores, gym, credit union, and chapel, presence of asbestos, scheduled to be vacated 10/95.

11 Training Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420024
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 2340–59,802 sq. ft., including classrooms, shallow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

Bldg. 13
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420025
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 8,109 sq. ft., photo lab/credit union, shallow pier foundation presence of asbestos, scheduled to be vacated 10/95.

Bldg. 37—Fuel Dispensing
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420026
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 640 sq. ft., 1-story frame, most recent use office/storage presence of asbestos, scheduled to be vacated 10/95.

Bldg. 9—Medical Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420027
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 26,322 sq. ft., 1-story wood, most recent use—examination rooms and office, shalllow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

Bldgs. 129, 197, 211, 216
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420028
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 80–960 sq. ft., most recent use—office and storage, scheduled to be vacated 10/95.

4 Aviation Maint. Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420029
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1,380–79,596 sq. ft., including hangars, presence of asbestos, scheduled to be vacated 10/95.

7 Storage Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420030
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 48–35,820 sq. ft., including warehouses and underground storage, limited utilities, presence of asbestos, scheduled to be vacated 10/95.

18 Maint/Production Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420031
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 216–12,423 sq. ft., including maintenance shops and storage, presence of asbestos, scheduled to be vacated 10/95.

3 Utilities Suppt. Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420032
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 540–2,196 sq. ft., including water support facilities, presence of asbestos, scheduled to be vacated 10/95.

Land (by State)

Arkansas

20 Outdoor Recreation Areas
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210047
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: Concrete or grassy areas, most recent use—swimming pools, golf courses, ball fields.

Land
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210079
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,962 acres, restrictive agricultural lease.

California

Land
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210039
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 200 acres of vacant land.

Seaside Blvd. Parcel (Site 6)
Long Beach Naval Station
725 N. Seaside Avenue
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy Base Close
Property Number: 789420013
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Five mixed use facs. on 14.3 acres; facs. include admin., storage and weighing facilities, any scheduled clean-up plans to be determined upon completion of site eval., sched. to be vacated 6/94.

Ocean Blvd. Parcel (Site 6)
Long Beach Naval Station
Long Beach Co: Los Angeles CA
Landholding Agency: Navy Base Close
Property Number: 789420014
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Two structs. on 2.7 acres, applied bldg./rec. pav. for battl. unit, .25 acre easement granted to City, environmental cleanup to be deter. upon completion of site evaluation, sched. to be vacated 6/94.

Colorado

15 Community/Recreation Facs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320012
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: Includes playgrounds, running track, soccer, baseball & softball fields, tennis & basketball courts, scheduled to be vacated 9/30/94.

Louisiana

25 Land, Airfield, Runways
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC

Property Number: 199210094
Status: Pryor Amendment
Base closure Number of Units: 25
Comment: 10 to 398,099 sq. yds., concrete or bituminous.

10 Recreation Areas
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210084
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 1 to 92 acres, most recent use—ball fields, golf course.

New York

Land—10 acres
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420017
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Includes ball diamond, maintenance bldg., and common lawn and several playground areas, scheduled to be vacated 9/95.

Texas

3 Recreation Areas
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force–BC
Property Number: 199210127
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: Three parcels including 176 acre golf course, .22 acre family camp, and 25 acre grazing land.

Unsuitable Properties

Buildings (by State)

Arkansas

23 (Capehart) Family Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210043
Status: Pryor Amendment
Base closure Number of Units: 23
Reason: Other
Comment: Structural deficiencies.

3 Detached Latrines
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210067
Status: Pryor Amendment
Base closure Number of Units: 3
Reason: Other
Comment: Detached Latrines.

California

35 Hazardous/Munitions Bldgs.
George Air Force Base
George AFB Co: San Bernardino CA 22394–5000
Landholding Agency: Air Force—BC
Property Number: 199420048
Status: Pryor Amendment
Base closure Number of Units: 35
Reason: Within 2,000 ft. of flammable or explosive material.

19 Fuel Facilities
George Air Force Base
George AFB Co: San Bernardino CA 22394–5000
Landholding Agency: Air Force—BC
Property Number: 199420049
Status: Pryor Amendment
Base closure Number of Units: 19
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 283
Naval Air Station, Alameda
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420037
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 301
Naval Air Station, Alameda
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420038
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Colorado

2 Dorms (Bldgs. 410 & 414)
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320011
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Extensive deterioration.

5 Hazardous Storage Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320020
Status: Pryor Amendment
Base closure Number of Units: 5
Reason: Extensive deterioration.

Bldg. 291—Warehouse
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320021
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Louisiana

14 Fuel Storage Containers
England Air Force Base
Alexandria Co: Rapides LA 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210095
Status: Pryor Amendment
Base closure Number of Units: 14
Reason: Other
Comment: Hazardous storage containers.

Land (by State)

California

Land
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420001
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Within airport runway clear zone.

[FR Doc. 94–13470 Filed 6–2–94; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–943–4210–06; GP4–181; OR–47431]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 954.97 acres of public lands out of Federal ownership. This action will also open 162.69 acres of 477 acres of reconveyed lands to surface entry and 277 acres to mining and mineral leasing. Of these lands, 160 acres have been and continue to be open to mining, subject to Section 24 of the Federal Power Act and provisions of 43 CFR 3730, and 40 acres have been and continue to be open to mining and 200 acres to mineral leasing. Of the lands reconveyed, 264.31 acres fall within the withdrawal boundary of the Grande Ronde Wild and Scenic River and remain closed to surface entry.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION:

1. Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, patents have been issued transferring 954.97 acres in Wallowa County, Oregon from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, N½NW¼NE¼NE¼ of Lot 1, NW¼NE¼NW¼NE¼, N½NW¼NW¼NE¼, SW¼NW¼NW¼NE¼ of Lot 2, SE¼NW¼, NE¼SW¼, and that part of the Lot 3 and the SW¼NW¼, lying south and east of the Grande Ronde River.

T. 6 N., R. 43 E.,
Sec. 23, S½NE¼, Excepting therefrom a parcel of land lying within the S½NE¼ of said Sec. 23, deeded to Wallowa County, in Book 59 of Deeds, page 349;
Sec. 24, SW¼NW¼;
Sec. 34, SE¼NE¼, NE¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼, and that part of the SW¼NE¼, SE¼SW¼, and W½SE¼ lying south and east of the Grande Ronde River;
Sec. 35, N½NW¼NW¼SW¼ and SW¼NW¼NW¼SW¼.

The areas described aggregate 477.00 acres in Wallowa County.

3. The lands lying within one-quarter mile of the river in the following described lands, are included in the withdrawal for the Grande Ronde Wild and Scenic River and will remain closed to surface entry:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, that part of Lot 3 and N½S½NW¼ lying south and east of the Grande Ronde River.
T. 6 N., R. 43 E.,
Sec. 23, S½NE¼, Excepting therefrom a parcel of land lying within the S½NE¼ of said Sec. 23, deeded to Wallowa County, in Book 59 of Deeds, page 349;
Sec. 24, SW¼NW¼;
Sec. 34, that portion of the S½NE¼, SE¼SW¼, W½SE¼, and E½NE¼SE¼ lying south and east of the Grande Ronde River.

4. At 8:30 a.m., on July 11, 1994, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and segregation of record, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on July 11, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on July 11, 1994, the following described lands will be opened to location and entry under the United States mining laws, subject to provisions of existing withdrawals. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, N½NW¼NE¼NE¼ of Lot 1, NW¼NE¼NW¼NE¼, N½NW¼NW¼NE¼, SW¼NW¼NW¼NE¼ of Lot 2, S½NW¼, NE¼SW¼, and that part of Lot 3 and the SW¼NW¼, lying outside of the one-quarter mile Grande Ronde Wild and Scenic River withdrawal boundary, south and east of the Grande Ronde River.
T. 6 N., R. 43 E.,
Sec. 34, N½SE¼SE¼, SW¼SE¼SE¼, and that part of the W½SE¼ lying outside of the one-quarter mile Grande Ronde Wild and Scenic River withdrawal boundary, south and east of the Grande Ronde River;
Sec. 35, N½NW¼NW¼SW¼ and SW¼NW¼NW¼SW¼.

6. At 8:30 a.m., on July 11, 1994, the lands in paragraph 5 will be opened to applications and offers under the mineral leasing laws.

Dated: May 26, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–13584 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–33–P

[(Montana) MT–068–4210–04; M82474]

Notice of Realty Action: Exchange of Public and Private Lands in Fergus County

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Designation of public lands in Fergus County, Montana, for transfer out of Federal ownership in exchange for lands owned by CR Kendall.

SUMMARY: BLM proposes to exchange fragmented public lands with low resource values to CR Kendall in order to acquire a block of lands with timber resources and wildlife habitat values.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian Montana

T. 18 N., R. 18 E.
Sec. 29: Lots 1, 2, 5, 7, 8
Sec. 31: Lots 8, 9, 16, 18, 19, 25
Sec. 32: Lots 2, 3, 4
containing 149.76 acres

These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregation effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

In exchange for these lands, the United States will acquire the following described lands from CR Kendall:

Principal Meridian Montana

T. 18 N., R. 18 E.
MS 6366—Abbey Lode
MS 6727—Extension Lode
MS 6728—Keno Lode
34.38 acres
MS 8470—Arizona Lode
MS 8471—Fox Lode
MS 8472—Mason Lode
MS 8473—Placer Lode
MS 8474—Legal Tender Lode
94.86 acres
containing 129.24 acres

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment, a Notice of Realty Action shall be published specifying the public lands being disposed of and the private lands being acquired.

DATES: July 18, 1994, interested parties may submit comments to the Bureau of Land Management, Lewistown District Manager, P.O. Box 1160, Lewistown MT, 59457.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange is available at the Lewistown District Office.

Dated: May 23, 1994.

David L. Mari,

District Manager.

[FR Doc. 94–13579 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–DN–P

[NV–930–4210–05; N–58090]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 27: N½SE¼NW¼SE½, NW¼SW¼NE¼SW¼, SE¼NW¼NW¼SW¼, NW¼NW¼NW¼SW¼.
containing 12.50 acres, more or less

This parcel of land, situated in Clark County is being offered as a direct sale to the City of Las Vegas.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will

occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for road purposes which have been granted to the City of Las Vegas by Permit No. 37142 under the Act of October 21, 1976 (43 U.S.C. 1719).

3. Those rights for sewage and drainage purposes which have been granted to the City of Las Vegas by Permit No. 41255 under the Act of October 21, 1976 (43 U.S.C. 1719).

4. Those rights for natural gas line purposes which have been granted to the Southwest Gas Corporation by Permit No. 48328 under the February 25, 1920 (30 U.S.C. 185 Sec. 28).

5. Those rights for water line purposes which have been granted to the Las Vegas Water District by Permit No. 48185 under the Act of October 21, 1976 (43 U.S.C. 1719).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Dated: May 23, 1994.

Colin P. Christenson,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94–13558 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–HC–M

[UT–050–4210–05; UTU–9669]

Utah: Recreation and Public Purposes (R&PP) Act Classification, Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Wayne County, Utah have been examined and found suitable for classification for lease to Wayne County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Wayne County proposes to use the lands for a temporary landfill. This action is necessary to provide for solid waste disposal needs on an interim basis while a permanent site is being required.

Salt Lake Meridian, Utah

T. 27 S., R. 3 E.

Sec. 10, NE¼NW¼SW¼

containing 10 acres more or less

The lands are conveniently located and are physically adapted for the proposed use.

The proposed use of the land for the intended purpose will not have serious adverse effects on the property.

The lands are not needed for Federal or State purposes and lease of the land is consistent with current BLM land use planning, local county plans and programs and would be in the public interest.

The lease will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. The landfill shall be operated in accordance with applicable Federal and State regulations governing solid waste disposal.

3. All valid existing rights documented on the official public land records at the time of lease issuance.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available at the office of Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Richfield District, 150 East 900 North, Richfield, Utah 84701.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a temporary landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or used of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for a temporary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 20, 1994.

Jerry Goodman,

District Manager.

[FR Doc. 94–13574 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–DQ–M

[OR-120-94-6332-01; GP4-176]

Recreation Site Stay-Limits, Overnight Use Closures, and Supplementary Rules; Coos Bay District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of camping stay limitations, other restrictions and closures for specific recreation sites on public lands administered by the Bureau of Land Management's Coos Bay District, Oregon.

SUMMARY: This notice supplements the established order, **Federal Register**/volume 59, No. 50/Tuesday, March 15, 1994, which generally limits camping stays on BLM-administered public lands and recreation sites within the Coos Bay District, Oregon, to 14 days in any 28-day period. Further, this camping stay limit, closures and supplementary rules notice describes site specific discrepancies or exceptions to the established order as follows:

Loon Lake Recreation Site, Lots 14 and 15 comprising 78.86 acres, more or less, in Section 2, T. 23 S., R. 11 W., Willamette Meridian.

1. Camping Length-of-Stay—During the period July 1 to August 31 in any one year, persons or parties camping at Loon Lake Recreation Site will be allowed to stay for no more than 14 days; this total may be reached through a number of separate visits or through 14 days of continuous occupation.

2. Pets In Day Use Area—With the exception of Seeing Eye dogs, no pets or other domestic animals shall be allowed in the Loon Lake Day Use area under any circumstances. The day use area includes the developed picnic grounds, beach, swimming area and boat ramp located south of the day use parking lots. Elsewhere in the recreation site, pets must be physically restrained at all times.

Sixes River Recreation Site, comprising 120 acres, more or less, in Section 12 (N1/2SW1/4 and NW1/4SE1/4), T. 32 S., R. 14 W., Willamette Meridian.

1. Camping Length-of-Stay—Persons may camp or occupy a site in Sixes River Recreation Site for a period of not more than 14 days in any 90 consecutive day period; the 14 days may be reached through a number of separate visits or through 14 days of continuous occupation.

Overnight Closures

Overnight camping or occupancy shall be prohibited in the following designated and proposed recreation sites:

Smith River Log Dump, Lot 10 comprising 5.77 acres, more or less, in Section 31, T. 20 S., R. 10 W., Willamette Meridian.

Big Tree Recreation Site, comprising 18 acres more or less, S1/2 of Lot 8 in Section 18, T. 27 S., R. 10 W., Willamette Meridian.

For purposes of this notice, camping is defined as the erection and use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, mooring a vessel, or parking a vehicle or trailer for the apparent purpose of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or leaving property at a location.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis Turowski, Outdoor Recreation Planner, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459, (503) 756-0100.

SUPPLEMENTARY INFORMATION: These site specific camping stay limits and day-use restrictions are being established to assist the Bureau in: preventing persons from camping for excessively long periods, thereby denying recreation opportunities to others; and minimizing unacceptable sanitary conditions and other resource impacts.

Authority for these supplementary rules is contained in CFR title 43, Chapter II part 8360, subparts 8364.1 and 8365.1-2(a). Violations of the supplementary rules under authority of 43 CFR 8365.1-2 are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: May 26, 1994

Mel Chase,

District Manager, Coos Bay.

[FR Doc. 94-13583 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-33-P

[OR-014-94-4410-02; G4-177]

Extension of Public Comment Period; Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, DOI.

ACTION: Extension of public comment period for the Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement.

SUMMARY: The Bureau of Land Management is extending the public comment period for the Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement. The comment period has been extended eighteen days to June 17, 1994.

DATES: Comments must be postmarked by June 17, 1994.

ADDRESSES: Comments should be directed to: A. Barron Bail, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building #25, Klamath Falls, Oregon 97603. Comments may be faxed to (503) 884-2097.

FOR FURTHER INFORMATION CONTACT: A. Barron Bail, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building #25, Klamath Falls, Oregon 97603, (503) 883-6916, ext. 4101.

Terry H. Sodorff,

District Manager, Acting.

[FR Doc. 94-13581 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-33-P

[ID-942-04-406A-02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 25, 1994.

The plat representing the dependent resurvey of Lot 6 in section 1, Township 4 North, Range 17 East, Boise Meridian, Idaho, Group No. 885, was accepted May 20, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 25, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-13594 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-04-406A-02]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 25, 1994.

The plat, in 2 sheets, representing the dependent resurvey of portions of the south and west boundaries, subdivisional lines, and the adjusted 1904 meander lines of the right and left

banks of the South Fork of the Boise River, the subdivision of section 30, and the survey of certain lots in section 30, Township 2 North, Range 10 East, Boise Meridian, Idaho, Group No. 830, was accepted May 13, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 25, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-13575 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-930-4210-06; AZA-23060]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,335.21 acres of public land to protect the unique habitat of the federally-listed endangered Nichol's Turk's Head Cactus. This notice closes the land for up to 2 years from settlement, sale, entry or location under the general land laws and the mining laws. The land will remain open to mineral leasing and discretionary uses as approved by the authorized officer. The withdrawal will be made subject to valid existing rights.

DATES: Comments and requests for a meeting must be received on or before September 1, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602-650-0509.

SUPPLEMENTARY INFORMATION: On May 4, 1994, a petition was approved allowing BLM to file the subject withdrawal proposal. This action will withdraw land within the Waterman Mountains Area of Critical Environmental Concern (ACEC). The withdrawal will protect 1 of only 2 known locations in the United States of the Nichol's Turk's Head Cactus. It will protect the species from surface disturbing activities and potential destruction. This proposal is in compliance with existing plans for protection of the species.

In 1979, the U.S. Fish and Wildlife Service listed the cactus as endangered and completed the Recovery Plan for the species in 1986. The BLM has since completed the Phoenix Resource Management Plan in which the recommendation is to pursue withdrawal of the ACEC resulting in protection of this critical habitat. Lands proposed for withdrawal are located in Pima County and are legally described as follows:

Gila and Salt River Meridian

T. 12 S., R. 9 E.,
- sec. 29, lots 3 and 4, S½NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, SE¼;
- sec. 30, lots 1-5 incl., lot 9, that portion of lot 10 lying outside of mineral entry patents, lot 11, S½NE¼, SE¼NW¼, E½NE¼SW¼, N½N½SE¼, SE¼NE¼SE¼, SW¼NW¼SE¼, SW¼SE¼SE¼;
- sec. 31, lots 3 and 4, those portions of lots 4 and 8 lying outside of mineral entry patents, NW¼NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NW¼SW¼NE¼, S½S½NE¼, NE¼SE¼NE¼, SE¼NW¼, E½SW¼, SE¼;
- sec. 32, MS 3885;
- sec. 33, N½NW¼, N½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, S½S½SW¼, W½W½SE¼.

T. 13 S., R. 9 E.,
- sec. 5, W½SW¼SW¼;
- sec. 6, lots 1-7 incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼.

The areas described aggregate 2,335.21 acres of public land in Pima County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Dated: May 18, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94-13582 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-32-P

Fish and Wildlife Service

Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control (ADC) and the Port Authority of New York and New Jersey (PA) have applied for permits to take migratory birds, including several species of gulls at John F. Kennedy International Airport (JFKIA). The Lead Agency for this Final Environmental Impact Statement (FEIS) is the ADC. The U.S. Fish and Wildlife Service (Service) is a cooperating agency with jurisdiction by law and actively participated in the scoping, drafting and reviewing of the Draft Environmental Impact Statement (DEIS) and the FEIS. Pursuant to the Council on Environmental Quality Regulations (§ 1506.3, title 40 CFR) for Implementing Provisions of the National Environmental Policy Act (NEPA), and the Department of Interior, Departmental Manual at 516 DM 1.1-6.6, the Service adopts the above FEIS as prepared by the U.S. Department of Agriculture. The Service used the information and analyses in the DEIS and FEIS to make its own, independent Record of Decision (ROD) for this project. Based on its independent evaluation and review, the Service has selected an alternative similar to the Integrated Management Program, Department of the Interior Policy (IMP/DOI) as its preferred alternative (FEIS, pp. 6-7 to 6-9). The conditions contained in the IMP/DOI are designed to minimize environmental harms and constitute an enforceable monitoring and enforcement program.

Background

JFKIA is one of three major airports in the New York Metropolitan Region, servicing approximately 28 million passengers per year. It is located at the

eastern end of Jamaica Bay, immediately adjacent to the Jamaica Bay National Wildlife Refuge, which is part of Gateway National Recreation Area (GNRA) [administered by the National Park Service (NPS)]. The interaction of birds and aircraft at JFKIA is a serious problem, creating significant hazards to human safety, as well as causing financial losses due to aircraft destruction, equipment damage, runway closures, and associated personnel costs. The proximity of the airport and wildlife refuge in a coastal location has contributed to an unusually high incidence of bird strikes at JFKIA. As early as 1975, a Service study concluded that gulls (herring, ring-billed and great black-backed) constituted the principal bird hazard at JFKIA. This problem was severely exacerbated by the establishment and rapid growth of a breeding colony of laughing gulls on the salt marsh islands in Jamaica Bay located at the southeast end of Runway 22R/4L. As the colony grew from 15 pairs in 1979 to more than 7,000 pairs in 1990, the number of laughing gulls involved in bird strikes increased from 2 to as many as 187 per year, and the percentage of bird strikes involving laughing gulls increased from less than 2 percent to approximately 50 percent. Other gulls accounted for approximately 25 percent of JFKIA's bird strikes. The 58 other bird species together (1979–93) have accounted for approximately 23 percent of the air strikes and 25 percent of the damage delays.

Throughout the 1960's, 1970's and 1980's, the PA and Federal, New York State and New York City natural resource management agencies have conducted activities to evaluate, control, and monitor JFKIA's bird strike hazard. These activities have included, but are not limited to the following: Experimental laughing gull egg-oiling project; international panel review; ecological studies; non-lethal harassment programs; and interim shooting programs. Despite implementation by the PA of a multi-faceted bird hazard reduction program and closure of nearby landfills, strikes by laughing gulls continued to increase. In response to the increase, a temporary, on-airport gull hazard reduction program was conducted by the ADC unit of the U.S. Department of Agriculture from 1991 through 1993. Between May and August of each year, gulls entering JFKIA airspace were shot. ADC biologists killed 14,191 laughing gulls in 1991, 11,847 in 1992, and about 6,500 in 1993. By the third year, this program reduced the number of bird strikes involving laughing gulls by more than 90 percent in the late 1980's.

In 1992, the concern for potential cumulative impacts associated with the shooting program demonstrated the need to explore issues involved in reduction of the hazards of gull/aircraft interaction at JFKIA. Consequently, the preparation of this Environmental Impact Statement (EIS) was initiated to explore all reasonable alternatives that might be implemented to reduce the number of gull/aircraft collisions at JFKIA in an effective, safe, environmentally sound manner that is in compliance with all applicable laws and regulations.

The EIS process, including early public participation, began in late 1992. The Notice of Intent to prepare the DEIS was published in the December 4, 1992 **Federal Register**. At that time, the Service became a cooperating agency. One scoping meeting and one public meeting were held at JFKIA. The Notice of Availability of the DEIS was published in the February 11, 1994 **Federal Register**. Prior to the release of the DEIS for public review, the Service reviewed several preliminary drafts. The comment period of the DEIS ended April 25, 1994, however, comments were accepted through April 28, 1994. The Service reviewed and commented on a preliminary FEIS, and all substantive comments were incorporated into the FEIS released to public. The Notice of Availability of the FEIS appeared in the May 6, 1994 **Federal Register**. The Environmental Protection Agency granted a 16-day waiver in the 30-day comment period for the FEIS on April 29, 1994.

The Preferred Alternative

The Service's Preferred Alternative closely resembles the IMP/DOI policy, which is set forth in pages 6.6 through 6.9 of the FEIS. The Preferred Alternative contains more specific actions and time frames than are found in the FEIS discussion of the IMP, which appears on page 6–11. These more specific time frames are discussed below in the subsection entitled "Service Actions" within the "Findings and Decisions" portion of the ROD.

ADC's Proposed IMP in the FEIS identifies 6 elements. The Service has direct regulatory control or influence on 4 of these 6 elements. These specific elements are (1) continued development of JFKIA's on-airport program, (2) on-airport shooting of gulls, (3) laughing gull nest/egg destruction in Jamaica Bay, and (4) on-colony shooting of adult laughing gulls. The Service has no regulatory control or influence on (1) reduction of off-airport attractants and (2) display of gull models to harass gulls.

The IMP/DOI has been split into 2 separate categories. Category 1 elements address management actions off the GNRA and Category 2 elements address management actions on the GNRA.

Implementation of Category 1 elements will begin immediately, with all components monitored continuously by the Bird Control Unit (BCU) and evaluated at least annually by the Bird Hazard Task Force (BHTF). Category 1 activities would be continued until the annual reviews of these programs by the BCU and BHTF demonstrate that either Category 1 activities are no longer needed or that additional management is required. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The FEIS states that the National Park Service (NPS) will initiate steps to satisfy legislative and procedural requirements, as well as management review for on-colony elements (Category 2) whenever it is demonstrated that off-colony elements (Category 1) are ineffective. If initiation of Category 2 actions are justified, the NPS must define actions, analyze impacts and document decisions in the context of legal authorities and management policies in further NEPA analysis and documentation.

1. Category 1 actions include continued development of JFKIA's on-airport program, reduction of off-airport attractants, and the on-airport shooting of gulls.

a. Continued development of JFKIA's on-airport program with emphasis upon improvements to the BCU and the BHTF.

(1) Enhance the professional capability of the BCU

(2) Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

(3) Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

(4) Reorganize the BHTF to assist as an independent review body.

These above improvements will, by themselves, likely result in marginal reduction in gull-aircraft interactions. However, their implementation will improve the decisionmaking and evaluation process and provide a mechanism for determination of when Category 2 elements need to be considered, while having low environmental impacts (FEIS 5.5 and

6.2.2). The Service Actions within the Preferred Alternative are presented in the Findings and Decisions section. These Actions explain what improvements to the JFKIA on-airport program will be implemented and when these Actions will be implemented.

b. Reduction of off-airport attractants (FEIS 5.4.2.4. and 6.2.1).

As the FEIS states at page 6–4, reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. Implementation of this program will likely result in a low reduction in gull-aircraft interactions. However, considering the absence of substantial environmental impacts, it was included as support to other Category 1 elements.

c. Continue on-airport shooting of gulls (FEIS 5.7 and 6.3.2).

Among on-airport lethal alternatives, only shooting is considered a feasible and effective option. Its environmental impacts are relatively low, as long as not more than approximately 14,500 laughing gulls are shot annually (according to ADC in the FEIS, p. 5-42). The on-airport shooting program could affect local and New York State laughing gull populations, unless another nesting colony is established in the State. Computer simulations indicate regional populations would not be impacted by an on-airport shooting program restricted to this level.

The impact of the on-airport shooting program on herring, great black-backed and ringbilled gull populations has been minimal, *e.g.* the numbers of these species shot were 508, 128, and 59, respectively, in 1991; 1,338, 150 and 131 in 1992; and 554, 121, and 169 in 1993. Local, regional and national populations of these gull species would not be adversely impacted by the on-airport shooting.

2. Category 2 elements include laughing gull nest/egg destruction in Jamaica Bay (FEIS 5.6.1.2.1 and 6.3.1), on-colony shooting of laughing gulls (FEIS 5.6.2.2. and 6.3.1), and display of synthetic gull models to harass gulls (FEIS 5.4.2.3 and 6.2.1).

If the potential risk to the flying public has been shown not to be reduced to acceptable levels as determined by the BHTF, the NPS will implement Category 2 control elements within the colony. On-colony actions will be proposed only after it has been judged that Category 1 actions have not been effective in reducing bird-aircraft interactions at JFKIA. The FEIS states that if initiation of Category 2 elements are justified, the NPS must define those actions, analyze those impacts and document its decision in the context of its legal authorities and its management policies and NEPA.

Other Alternatives Considered

Four alternatives, including the proposed action, were considered in the FEIS.

Alternative II. This alternative is the No-Action Alternative (FEIS 6.1), which involves the continuation of JFKIA's on-airport program (vegetation management, water management, insect control, sanitation management, and BCU programs), without further expansion, and does not include the intensive on-airport shooting program that was conducted during the 1991–93 period. The No-Action Alternative will not sufficiently reduce the gull hazard or address the issue of public safety for the 28 million passengers that use JFKIA each year. Because it is not effective, the No-Action Alternative is not considered for implementation.

Alternative III. This alternative involves implementation of a nonlethal gull hazard control program (FEIS 6.2). Off the airport, it addresses nesting habitat modification, discouraging use of the laughing gull colony site through harassment, and reduction of off-airport attractants. On JFKIA, it addresses expansion of the JFKIA on-airport control program. Overall, this alternative was not selected due to substantial adverse environmental impacts. However, elements of this alternative were included in the Preferred Alternative.

Of the on-colony habitat modification elements of this alternative, all these elements were considered to present unacceptable environmental impacts, which cannot be substantially mitigated and are therefore not considered for selection as preferred alternatives. Those elements included marsh devegetation through moving, herbicide, burning and excavation.

The only on-colony harassment element was display of synthetic models representing dead gulls. Although this element would not create substantial adverse ecological environmental impacts it is only moderately effective in reducing the gull hazard. The display of gull models were included as a Category 2 element of the IMP/DOI.

The reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. The effectiveness in reducing gull/aircraft interactions is moderate to low and the environmental impacts of this element is very low. This element was included as a Category 1 element of the IMP/DOI.

The only on-airport element was the expansion of the existing on-airport program (Section 1.a. of the Preferred Alternative). The expansion of the existing on-airport program was not considered as a preferred alternative by itself, because it had a low level of effectiveness. However, this element was included as a Category 1 element of the IMP/DOI.

Alternative IV. This alternative involves implementation of a lethal gull hazard control program (FEIS 6.3). Off the airport, it addresses population reduction of the laughing gull colony, including nest/egg destruction or oiling eggs, and population reduction of adults. On JFKIA, it addresses shooting and avicide application.

Several on-colony elements were considered. These elements included physical destruction of nests and eggs, oiling eggs, toxicant application to nesting adults, shooting of adults on the colony site, and introduction of predators to the nesting colony. None were considered effective enough individually to warrant consideration as a preferred alternative. However, shooting of adult gulls from blinds, and egg and nest destruction were included as Category 2 elements of the IMP/DOI.

Among JFKIA elements, only shooting was a feasible and effective option. The environmental impacts of this element for laughing gulls was low, as long as not more than 14,500 are shot annually Populations of herring, great black-backed and ring-billed gulls would not be affected by this program. This alternative was included as a Category 1 element of the IMP/DOI.

Alternative methods. Twelve methods for gull hazard management on JFKIA were examined as possible alternatives to the IMP/BOI. These include planting laughing gull breeding areas with shrubs (FEIS 3.3.1.2), landform alteration by filling marsh (FEIS 3.3.1.3.1), landform alteration by physical obstruction (monofilament, cordage, or wire barriers) (FEIS 3.3.1.3.3), harassment of breeding laughing gulls by falconry (FEIS 3.3.2.1), harassment of breeding laughing gulls by dogs (FEIS 3.3.2.2), harassment of breeding laughing gulls by acoustics (FEIS 3.3.2.3), harassment of breeding laughing gulls by deterrent display of dead gulls (FEIS 3.3.2.4), harassment of breeding laughing gulls by radio-controlled model airplanes (FEIS 3.3.2.5), alteration of airport operations (numbers of aircraft using JFKIA, daily distribution of aircraft using JFKIA and types of aircraft using JFKIA) (FEIS 3.4.2.1), alteration of runway use patterns (FEIS 3.4.2.2), research and development into aircraft engineering to reduce air strikes (FEIS 3.4.3.2), and bird tracking and warning devices (FEIS 3.4.3.4). It was concluded that none of these alternatives would be

effective in the control of the gull hazard at JFKIA.

Minimization of Impacts and Public Concerns

The Preferred Alternative incorporates a variety of measures to minimize the adverse environmental, social and economic impacts as described in the FEIS. Improvements to the bird hazard management program at JFKIA will permit the continuous monitoring and evaluation of this program. The Preferred Alternative significantly reduces the threat of bird/aircraft interactions at JFKIA for the 28 million travelers using that airport yearly through the implementation of the IMP/DOI. The IMP/DOI includes improvement of the on-airport management program and data collected for the evaluation of the on-airport and off-airport management programs. Specific measures to minimize impacts of and public concerns about the proposed action are identified in the Findings and Decision section of this document

Service Authority

Statutory authority for the Service's actions is as follows:

Migratory birds listed in treaties with Great Britain (Canada), Mexico, Japan, and the former Soviet Union are protected and activities involving them are regulated in the United States by the Migratory Bird Treaty Act. The Secretary of the Interior under 16 United States Code (U.S.C.) Sections 703–712 has responsibility for management of those migratory birds, including the issuance of permits to take those birds. Criteria for issuance of Special Purpose permits is further defined by regulations found in Title 50 CFR part 21.

Specifically, 16 U.S.C. 704 provides:

"Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary * * * is authorized and directed from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine, when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow, * * * taking * * * of any such bird * * *".

Generally, all species of gulls are listed in the treaties and further identified in 50 CFR 10.13, List of Migratory Birds. Prohibited activities involving these listed migratory birds are more clearly identified in 50 CFR 21.11 which provides: "No person shall take * * * any migratory bird * * * except as permitted under the terms of a valid permit * * *".

The regulations then provide for issuance of permits for general standardized activities (import/export, banding and marking, scientific collecting, taxidermy, waterfowl sale and disposal, and falconry activities) utilizing standard form permits. They also provide for issuance of Special Purpose permits which authorize otherwise prohibited activities involving migratory birds, not otherwise covered by the standard form permits, when: "* * * an applicant * * * submits a written application containing the general information and certification required by part 13 [50 CFR 13] and makes a sufficient showing of * * * compelling justification." (50 CFR 21.27)

These Special Purpose Permit regulations give the Service broad authorities to address human safety issues at JFKIA. The Preferred Alternative is compatible with all conventions and treaties and the Service Actions identified within this Preferred Alternative are compatible with the intent of these conventions, treaties, and associated regulations. The compelling justification for these Service Actions is the issue of human safety at JFKIA.

Service Actions

On May 24, 1994 the Federal Aviation Authority (FAA) made a declaration "* * * that in the opinion of the Federal Aviation Authority an 'urgent situation' exists at JFK which requires emergency actions which are necessary on a limited and temporary basis for the protection of life, health, and property or natural resources." As of this time, there is no effective short-term alternative to address the public safety risk presented by gulls within JFKIA airspace, except to permit limited shooting of gulls at the airport. As is explained below, the Service intends to permit shooting to proceed in May 1994, subject to certain permit conditions.

1994 Actions. The Service will issue Special Purpose Permits to ADC to permit the 1994 shooting program and to PA to permit the 1994 BCU program. Both permits will be non-renewable and ADC's permit will expire on August 20, 1994, by which time the peak of laughing gull strikes can reasonably be expected to have diminished. The PA's permit will expire on October 1, 1994, as is discussed in greater detail below. Non-renewable means that activity ends when the permit expires, and another permit must be issued before the activity can be continued (Title 50 CFR 13.22).

The Service will take this action on the ADC permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA and the information presented in the FEIS concerning the hazards presented by gulls at JFKIA. The Service will issue the ADC permit, after the Service has concurred with documentation provided by ADC that the number of birds flying into JFKIA airspace present a hazard to aircraft.

The Service will condition the PA permit to authorize PA personnel to (1) kill non-endangered and non-threatened species of migratory birds, except eagles and all species of gulls, as provided by 50 CFR 21.41 (c)(2), when they are creating or about to create a hazard to aircraft; (2) all carcasses collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. This gull restriction in the PA permit is based upon a State of New York limitation. The Service will condition the ADC permit to authorize ADC personnel to (1) kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed and 200 ring-billed gulls, when found flying into JFKIA airspace and creating a hazard to aircraft, using shotguns with steel shot; (2) all specimens collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. The validity of both permits is also conditioned upon strict observance of all applicable foreign, state, local or other Federal law.

The restrictions placed upon the take of herring, black-backed, and ring-billed gulls under the 1994 ADC permit reflect approximate past performance under the 1991–93 permits, because these takes have been demonstrated to have no impacts on local, state, or regional populations (FEIS, pp. 3–92 to 3–93). The restriction for shooting no more than 14,500 laughing gulls for the 1994 ADC permit is based on the results of population modeling (FEIS pp. 3–4 to 3–9 and p. 5–42) which suggests that the current Massachusetts/New York/New Jersey population could sustain a maximum annual loss of approximately 14,500 birds to shooting every year.

The Service will entertain an application from the PA for a Special Use Permit to support the activities of their BCU for the remainder of 1994 provided that they have agreed to the improvements to the BCU, BHTF and JFKIA management programs and the schedule for these improvements to be completed on or before September 15,

1994. The Service will monitor the compliance of the PA to implementation of these improvements. Future permits will not be issued if improvements are not implemented according to the implementation schedule.

Consistent with IMP/DOI policy to enhance the professional capability of the BCU and to establish capability within the BCU to assess and monitor the effectiveness of control programs on target species, the Service has determined that the PA must fundamentally change the staff, functions and size of the existing BCU to insure that the BCU's capabilities and functions are improved prior to any application by the ADC or the PA for any permit for 1995. The Service has determined that the time frames set forth in Section 6.4.3.2 are inadequate. Therefore the Service has determined that the following measures shall be implemented by the dates set forth below:

1. Enhance the professional capability of the BCU.

The PA will hire a person trained in ornithology, or wildlife biology, or in a related field as the supervisor for the BCU by August 1, 1994. This supervisor will be trained to the Master of Science level in either ornithology or wildlife biology and will be capable of developing and evaluating the bird hazard management program at JFKIA and developing monitoring programs for birds in the JFKIA area.

The PA must apply to the Service for the October 1994 BCU permit by September 15, 1994, and should indicate in its application how it has complied with hiring the BCU supervisory biologist (#1 above) and the reorganization of the BHTF. With this application the PA may include its assessment of the BCU's personnel capabilities and expertise. This assessment, if provided, should address needs for increases in staff size, changes in professional capabilities of staff, and training. It should also identify BCU equipment and support requirements, as well as document how the BCU will conduct the collection of biological field data, surveys and monitoring programs described in the IMP/DOI and this document.

2. Reorganize the BHTF to assist as an independent review body.

The PA will reorganize the BHTF to serve as an advisory committee to the Port Authority for the evaluation of the BCU program and the gull shooting program by August 1, 1994. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The agencies currently composing the BHTF would remain. The chairmanship would be rotated on an annual basis; however, the Service would chair the task force during this reorganization period.

On May 17, 1994, the Port Authority provided the Service with a letter indicating significant disagreement concerning those measures needed to implement the IMP/DOI. The Service wants a competent, professional, fully-staffed BCU in place before the Spring of 1995. Based upon the Service's evaluation of the current capabilities of the BCU and the improvements required to implement the IMP/DOI, the Service has identified additional organizational improvements. The Service will evaluate subsequent requests for special permits in light of the PA's implementation of the tasks set forth above, the measures described below, advice from the BHTF, and any other information submitted by the PA. Additional measures to improve the capabilities of the BCU include the following:

1. Additional enhancement of the professional capability of the BCU.

The PA will increase staff size for the BCU to 10 permanent, full-time members by November 1, 1994. All BCU employees will be qualified to consistently and accurately collect biological field data and to conduct surveys and monitoring programs with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. The BCU will include at least one person trained in entomology and pesticides.

The PA will provide sufficient equipment and vehicles to support the improved BCU by November 15, 1994. This includes equipment to disperse water following rain storms, pyrotechnics, speaker systems in all vehicles, firearms, and safety equipment.

The PA will train and authorize all BCU employees to conduct all harassment methods, including the firing of firearms for lethal and non-lethal harassment by November 15, 1994. This includes the development of a training plan for all employees.

The BCU staff requires 7 people to perform its bird harassment responsibilities (1 supervisor, 2 employees per shift, 2 shifts per day, 7 days a week). In order to incresae the capability of the BCU, the Service has determined that three additional people are required, as well as improving the professional training and capabilities of the BCU and assuring that the BCU is adequately equipped to do its job.

2. Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

On or before January 31, 1995, the PA will develop and implement monitoring programs to assess the following:

(1) Evaluation of the effectiveness of the gull shooting program and JFKIA's bird hazard management program;

(2) Identification of criteria that could be used to determine when a gull shooting program should begin or end;

(3) Identification of criteria, with the involvement of the BHTF, that could be used to determine when Category 1 elements have become ineffective;

(4) Evaluation of off-airport attractants that encourage gulls to fly through JFKIA airspace; and

(5) Continuing evaluation of potential on-airport attractants.

3. Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

The PA will produce written management plans for vegetation, insect, water, and solid waste management on JFKIA by December 29, 1994. These plans will document the existing programs and the overall management strategies for these programs.

The Service has determined that these written plans are needed as part of the Service's monitoring and enforcement program for this permit. The PA has actively addressed these management issues on JFKIA, as documented in FEIS (Section 3.2); however, poor documentation for these programs makes interpretation and monitoring impossible at this time.

4. As a part of the effort to develop data on bird species contributing to hazards at JFKIA and to a determination of when Category 2 measures may be appropriate, the NPS is committed to participating in seasonal surveys in 1994 to monitor gull populations and distribution in the Jamaica Bay area and will provide these data to the BCU and BHTF.

1995 Actions. For the 1994–95 period, the Service will monitor the above described implementation schedule and will not consider applications for Special Purpose Permits for either the PA or ADC in 1995, unless all of the above specified improvements are implemented according to the above schedule or unless a deviation from these conditions has been expressly permitted by the Service.

The Service has ascertained that these specific improvements are needed under the IMP/DOI element dealing

with continued development of JFKIA's on-airport program. The Service has determined that these programs are needed to support the Service's monitoring and enforcement program for this permit. These improvements will, by themselves, likely result in a marginal reduction in gull-aircraft interactions. However, their implementation will improve the decision-making and evaluation process, and will provide a mechanism for determination of when Category 2 elements need to be considered. In addition, the NPS has committed to participate in seasonal surveys in 1995 to monitor gull populations and distribution in the Jamaica Bay area, as part of this program, and will provide these data to the BCU and BHTF to support this monitoring and enforcement program.

1996 Actions. In 1996 and subsequent years, the Service will review data collected by the BCU and recommendations made by the BHTF, as part of the annual review process for issuance of Special Purpose Permits. These future permit decisions and any restrictions placed upon future permits will be guided by this improved data collection and analysis system implemented by the PA for JFKIA in 1994.

Findings and Decisions

Having reviewed and considered the FEIS for the gull hazard management program at JFKIA and the public comments thereon, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and

2. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternative thereto, the Preferred Action alternative with the Service's conditions described above is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects discussed in the FEIS; and,

3. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Preferred Alternative in the FEIS and its supporting appendices; and,

4. The limitations on the numbers of gulls which may be taken under this permit are compatible with the terms of the Migratory Bird Conventions and are made with due regard to their distribution, abdundance, breeding habits, and migratory patterns; and

5. The ADC and the PA have made a sufficient showing of compelling justification for these permits; and

6. All improvements to the BCU, BHTF, and JFKIA management programs, as specified in above in the Service Actions section during the term of each permit are hereby adopted as part of this finding and will be used to guide future migratory bird permit decisions.

Having made the above findings, the Service has decided to proceed with implementation of the Preferred Alternative with the above conditions.

This Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Record of Decision was approved by the Regional Director of the Service on May 25, 1994.

Dated: May 25, 1994.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 94-13530 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of the Joint Draft Environmental Assessment and Draft Restoration Plan for the John Day River Acid Spill

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and the Confederated Tribes of the Umatilla Indian Reservation (hereafter known as the Trustees) announce the availability of the Joint Draft Environmental Assessment and Draft Restoration Plan for the John Day River Acid Spill (DEA/Plan) for public review. The Trustees are proposing to restore natural resources injured as a result of the 1990 John Day River acid spill. Public comments are invited pursuant to applicable National Environmental Policy Act regulations and Department of the Interior Natural Resource Damage Assessment regulations.

DATES: Written comments are requested and will be accepted until July 5, 1994.

ADDRESSES: Requests for copies of the DEA/Plan may be sent to: U.S. Fish and Wildlife Service, Ecological Services, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266-1325.

Written comments or material regarding the DEA/Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266-1325, (Attention: Environmental Contaminants Program).

Interested parties may also call (503) 231-6179 for further information.

SUPPLEMENTARY INFORMATION: On February 8, 1990, a tanker truck owned and operated by Thatcher Trucking Company of Salt Lake City, Utah skidded off Highway 395 and rolled down an embankment into the North Fork of the John Day River in north-central Oregon. An estimated 3,500 gallons, or 33,500 pounds, of hydrochloric acid was discharged into the river and flowed downstream at an approximate rate of one mile per hour.

The spill drastically changed the pH of the river water resulting in extensive mortality and injury to fish resources. An estimated 98,000 to 145,000 fish were destroyed, including 4,000 anadromous fish, 300 bull trout, and 9,500 Pacific lampery. Additionally, 50 percent of the chinook salmon alevins were estimated to have been killed. Aquatic mammals, waterfowl, and endangered species, which utilize the John Day River Basin, may also have been directly or indirectly impacted by the spill.

In 1992, the United States of America, State of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation settled claims for natural resource damages associated with the 1990 John Day River acid spill. The claims were settled by consent decree under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The consent decree established a $275,000 Trust Fund for use only for restoration, replacement, or acquisition of equivalent resources injured by the spill.

A Restoration Committee, comprised of a representative from each Trustee, was established to review and select restoration actions. The following strategies and alternatives were developed by the Restoration Committee: (1) Permanent Protection—land acquisition and perpetual easements, leases, or covenants; (2) Temporary Protection—easements, leases, or management rights; (3) Habitat Enhancement—riparian habitat restoration, instream habitat improvement measures, and watershed improvement measures; (4) Combined Protection and Enhancement—all alternatives previously listed; and (5) No Action—unmitigated action.

In order to maximize recovery of injured resources, the Restoration

Committee selected the Combined Protection and Enhancement Strategy. In selecting this strategy, the Trustees emphasis on the selection of restoration projects was on Permanent Protection followed by Temporary Protection and then Habitat Enhancement projects. Selected projects include the following; land acquisition, permanent easements, riparian habitat protection, riparian habitat restoration, instream habitat enhancement, erosion control, and watershed restoration. These projects are outlined in the DEA/Plan and would be implemented on the North Fork, Middle Fork, and other tributaries of the John Day River. The primary criteria for the selection of projects was based on the project's potential to restore resources injured by this spill. The Restoration Committee is also actively seeking matching funds for restoration projects in order to enhance selected projects or implement additional projects. Potential cost-share organizations include the U.S. Forest Service, the Oregon Department of Fish and Wildlife, the Nature Conservancy, and the Bonneville Power Administration, among others.

Interested members of the public are invited to review and comment on the DEA/Plan and to provide additional alternatives and projects. Copies of the DEA/Plan are available for review at the U.S. Fish and Wildlife Service's Ecological Services Field Office (2600 S.E. 98th Avenue, suite 100, Portland, Oregon), the Oregon Department of Fish and Wildlife's John Day District Office (305 North Canyon Boulevard, Canyon City, Oregon), and the Grant County Library (507 South Canyon Boulevard, John Day, Oregon). Copies of the DEA/Plan may be obtained at the aforementioned U.S. Fish and Wildlife Service Office. All written comments will be considered and addressed in the final agency determination.

Dated: May 23, 1994.

Marvin Plenert,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 94–13531 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan Proposed Establishment of Key Cave National Wildlife Refuge Lauderdale County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Key Cave National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Lauderdale County, Alabama. The purpose of the proposed refuge is to protect and manage up to 2,300 acres of land to ensure the biological integrity of Key Cave, which has been designated by the Service as critical habitat for the endangered Alabama cavefish and as a priority one maternity cave for the endangered gray bat. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the Tennessee Valley authority, the State of Alabama, the Soil Conservation Service, The Conservation Fund, the Wildlife Enhancement Council, and Monsanto, Inc. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public for review and comment on June 13, 1994. Written comments must be received no later than July 29, 1994, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345.

SUPPLEMENTARY INFORMATION: The primary objective of the proposed Key Cave National Wildlife Refuge are to (1) protect habitat for threatened and endangered species, (2) promote habitat for threatened and endangered species, (2) promote habitat for a natural diversity of wildlife, (3) enhance habitat for nongame migratory birds, and (4) provide opportunities for compatible outdoor recreation and environmental education and interpretation.

The proposed refuge area is located in northwest Alabama, about 5 miles southwest of Florence, the county seat and largest city in Lauderdale County. The cave lies on the northern shore of Pickwick Lake in a limestone karst area that contains numerous sinkholes and several underground cave systems. The area's sinkholes form an integral part of the groundwater recharge to the caves.

The proposed refuge would consist of about 1,500 acres of land acquired in fee title, with an additional 800 acres of sinkholes in the cave's recharge area protected through conservation easements with willing landowners.

The major wildlife values are the two endangered species which inhabit Key Cave: the Alabama cavefish (*Speoplatyrhinus poulsom*) and the gray bat (*Myotis grisescens*). Key Cave is used as a summer maternity cave by the gray bat. Because of its highly specific habitat and roost requirements, fewer than 5 percent of the available caves in the animal's range are suitable for gray bat occupation. The flightless young bats roost in Key Cave from late May to mid-July, and thousands could die from a single human disturbance or act of vandalism.

The Alabama cavefish has been found to exist only in Key Cave. Just nine specimens are known to exist in scientific collections. No other populations of this species are known. Based on its apparent distribution, the number of specimens collected, and the number of individuals observed, this small fish appears to be the rarest of American cavefish and one of the rarest of all freshwater fish. Its habitat in Key Cave is threatened by human disturbance, groundwater degradation, alternations in the area's drainage and hydrologic patterns, lowered groundwater levels, and diminished organic matter inputs.

Both the Gray Bat Recovery Plan and the Alabama Cavefish Recovery Plan identify land acquisition as the primary means for protecting Key Cave, and both list that protection as a priority one task. Because the proposed Key Cave refuge is identified as critical habitat for the Alabama cavefish and as a priority one maternity cave for the gray bat, land acquisition would be sought under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

Dated: May 19, 1994.

John R. Eadie,

Acting Regional Director.

[FR Doc. 94–13529 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Technical/Agency Draft Recovery Plan for Large-flowered Skullcap for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a technical/agency draft recovery plan for large-flowered skullcap. Large-flowered skullcap (*Scutellaria montana* Chapman) is an herbaceous representative of the mint family (Lamiaceae), with known populations in northern Georgia and southeastern Tennessee. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before August 2, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the address and telephone number shown above (Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the large-flowered skullcap is possible. Accordingly, this draft recovery plan outlines a mechanism that provides for the protection and maintenance of all known populations, with emphasis on determining autecological factors necessary to manage the species. In 1986 the taxon was listed as endangered by the Service. At that time there were seven populations known in Georgia and three in Tennessee. The taxon was threatened by habitat loss to timbering or development. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only two sites, neither of which was completely protected from known threats. Currently, large-flowered skullcap is known to occur in two counties in Tennessee and four counties in Georgia, within a limited area of the Ridge and Valley and Cumberland Plateau provinces. There are 17 extant populations (12 in Tennessee and 5 in Georgia) that vary greatly in size. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f)

Dated: May 26, 1994.

Brian P. Cole,

Field Supervisor.

[FR Doc. 94–13533 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Agency Draft Recovery Plan for Leafy Prairie Clover for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for the leafy prairie clover (*Dalea foliosa*). This rare perennial herb has declined by over 45 percent from historic occurrences. Currently there are 21 known populations in three States—Alabama (2), Illinois (3), and Tennessee (16). The species grows on cedar glades or shallow-soiled prairies. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before August 2, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the address and telephone number shown above (Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

(Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is leafy prairie clover (*Dalea foliosa*). Recovery actions for the species will occur on limestone cedar glades in Bedford, Davidson, Marshall, Maury, Rutherford, Williamson, and Wilson Counties, Tennessee; Lawrence and Morgan Counties, Alabama; and shallow-soiled prairies in Will County, Illinois. Specific recovery actions that need to be implemented include: (1) The identification and prioritization of protection, management, and restoration needs; (2) the development of preserve designs and implementation of protection plans for significant sties; (3) the development and implementation of management plans, enhancement of existing populations, and establishment of new populations; and (4) the development and implementation of population monitoring, demographic, and life history studies.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 26, 1994.

Brian P. Cole,

Field Supervisor.

[FR Doc. 94–13534 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Meetings: Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 1 p.m. to 6 p.m. on Wednesday, June 22, and from 8 a.m. to 5 p.m. on Thursday, June 23, 1994.

PLACE: The meeting will be held at the Miner's Inn Convention Center, 122 East Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Task Force will meet to recommend projects for funding through Federal and State fishery restoration grants in the 1995 fiscal year, decide on a procedure for public review of a third draft of a restoration plan amendment dealing with the upper Klamath basin, and consider how to implement restoration plan policies dealing with Klamath River flows.

Dated: May 25, 1994.

Thomas J. Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–13532 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf, Central and Western Gulf of Mexico Natural Gas and Oil Lease Sales 152 and 155

AGENCY: Minerals Management Service, Interior.

ACTION: availability of the proposed notices of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notices of Sale for proposed Natural Gas and Oil Lease Sale 152 in the Central Gulf of Mexico, and proposed Natural Gas and Oil Lease Sale 155 in the Western Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to natural gas and oil leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notices of Sale.

The proposed Notices of Sale for proposed Sales 152 and 155 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2519.

The final Notices of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for early 1995 for proposed Sale 152, and mid-1995 for proposed Sale 155.

Dated: May 23, 1994.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 94–13507 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–406 (Sub-No. 1X)]

Central Kansas Railway, Inc.—Abandonment Exemption—in Kay and Grant Counties, OK, and Harper County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Central Kansas Railway, Inc., of a 48-mile line of railroad in Kay and Grant Counties, OK, and Harper County, KS, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 3, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by June 13, 1994. Petitions to stay must be filed by June 13, 1994. Requests for a public use condition conforming to 49 CFR 1152.28(a)(2) and petitions to reopen must be filed by June 23, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–406 (Sub-No. 1X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representatives: Louis E. Gitomer, Taylor, Morell & Gitomer, 919 18th Street, NW., Suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: May 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13512 Filed 6–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 High Performance Composites Cooperative Arrangement

Notice is hereby given that, on April 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), BDM Federal Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative arrangement known as the "Agreement for the Establishment of a Cooperative Arrangement for Development of High Performance Composites" (the "HPC"). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are BDM Federal, Inc., McLean, VA; General Electric Company, acting through General Electric Aircraft Engines, Evendale, OH; and United Technologies Corporation, acting through Pratt & Whitney, Government Engines and Space Propulsion, Hartford, CT. The purpose of the project is to pursue a research program sponsored by the Advanced Research Projects Agency into low cost, high performance ceramic matrix and metal composites for objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology. To meet these objectives, the Partnership will collect, exchange, and analyze research information regarding this technology; conduct tests and develop basic engineering techniques for use in proof of theories and concepts in the relevant topics; and perform further acts allowed by the Act that would advance the Partnership's objectives in this area.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13545 Filed 6–2–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Natural Gas Vehicle Technology Partnership

Notice is hereby given that, on May 3, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research project entitled "Natural Gas Vehicle Technology Partnership". The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the parties to the project are Chrysler Corporation, Highland Park, MI; Ford Motor Company, Dearborn, MI; and General Motors Corporation, Detroit, MI. The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to natural gas technology with respect to automotive systems. At least initially, the parties will concentrate their investigations on natural gas storage techniques. The objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology. To meet these objectives, the Partnership will collect, exchange, and analyze research information regarding this technology; conduct tests and develop basic engineering techniques for use in proof of theories and concepts in the relevant topics; and perform further acts allowed by the Act that would advance the Partnership's objectives in this area.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13546 Filed 6–2–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions, shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

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Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of May 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–13439 Filed 6–2–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for a Study of Growth and Diversity in Folk and Traditional Arts

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a study of the Growth and Diversity in Folk and Traditional Arts in the United States and its Territories. The project will result in a report, or series of reports, that will advance public knowledge and understanding of the complexity of the folk and traditional arts in America, including an examination of its art forms, artists, audiences, and arts organizations; the growth in the quantity of this activity in the last 15 years; and an overview of how this activity is supported through public arts agencies and through folk and traditional arts organizations themselves. It is anticipated that the project will entail ten case studies; identification, compilation, and analysis of secondary data on cultural and ethnic diversity; and interviews with Folk and Traditional Arts Organizations. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–10 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program solicitation PS 94–10 is scheduled for release approximately June 17, 1994 with proposals due August 15, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave. NW., Washington, DC 20560 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–13528 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

International Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (Residencies and Fellowships Visual Arts Prescreening Section) to the National Council on the Arts will be held on June 28–29, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 26, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13527 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 15–16, 1994. The panel will meet from 8:30 a.m. to 5:30 p.m. in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 4:30 p.m. on June 15 for orientation, presentations and a discussion of the assessment report and from 4 p.m. to 5:30 p.m. on June 16 for a policy and guidelines discussion.

The remaining portions of this meeting from 4:30 p.m. to 5:30 p.m. on June 15 and from 8:30 a.m. to 4 p.m. on June 16 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 24, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13526 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 16 June 1994 has been cancelled. The next meeting is scheduled for 28 July 1994 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW, Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 24 May 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–13549 Filed 6–2–94; 8:45 am]

BILLING CODE 6330–01–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Big Valley Rancheria of Pomo Indians
Confederated Tribes of the Umatilla Indian Reservation
Crow Creek Sioux Tribe
Elem Indian Colony
Jicarilla Apache Tribe
Kickapoo Traditional Tribe of Texas
Lac Vieux Desert Band of Lake Superior Chippewa Indians

Moapa Band of Paiutes
Rosebud Sioux Tribe
Temecula Band of Luiseno Mission Indians
Turtle Mountain Band of Chippewa Indians
Wisconsin Winnebago Nation

Anthony J. Hope,

Chairman.

[FR Doc. 94–13481 Filed 6–2–94; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communication Systems.

Date and Time: June 21, 1994, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 365, Arlington, Virginia 22230.

Contact Person: Dr. Albert B. Harvey, Program Director, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 27, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13511 Filed 6–2–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: June 15–17, 1994; 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, 2117 E Street, North West, Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Roosevelt Y. Johnson, Program Director, 4201 Wilson Boulevard, room 907, Arlington, VA 22230 Telephone: (703) 306–1696.

Purpose of Mtg: To provide advice and recommendations concerning proposals submitted to the Graduate Research Traineeships Program (GRT).

Agenda: Review and evaluate GRT proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 27, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13510 Filed 6–2–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Patriots Point Development Authority; U.S. Maritime Administration; N.S. SAVANNAH; Environmental Assessment and Finding of no Significant Impact Regarding License Amendment

[Docket No. 50–238]

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Amended Facility License No. NS–1 issued to the Patriots Point Development Authority (PPDA) and the U.S. Maritime Administration (MARAD) for possession but not operation of the nuclear reactor facility aboard the *N.S. Savannah.*

Environmental Assessment

Identification of Proposed Action

By application dated May 19, 1994, as supplemented by letters dated May 24, and May 25, 1994, PPDA and MARAD requested authorization to (1) delete the PPDA as a co-licensee, allow relocation of the *N.S. Savannah* to the James River Reserve Fleet (JRRF), (2) change responsibility for the performance of radiological health physics coverage, surveillance and response to the U.S. Army Center for Public Works, Humphries Engineering Center, (3) change the composition of the Review and Audit Committee to be consistent with the deletion of PPDA as a co-licensee, and (4) make other minor changes and discontinue public access to the facility. PPDA has decided to discontinue use of the ship as a museum exhibit and return the ship to MARAD, which has retained ownership. The ship was removed from the PPDA pier on May 24, 1994, under the existing license. The ship will be towed to Baltimore, Maryland, for drydock repairs, also under the existing license. The ship will then be relocated to the JRRF, near Fort Eustis, Virginia for long term storage.

Need for Proposed Action

The proposed action is needed in order to remove the PPDA as co-licensee, to relocate the *N.S. Savannah* to the JRRF, near Fort Eustis, Virginia, for long term storage following repairs in drydock, and to change Technical Specifications consistent with these changes in licensee and location.

Environmental Impact of the Proposed Action

The potential environmental impact associated with this action is the relocation of the ship to the JRRF for long term storage.

With regard to potential radiological impacts, twenty two years ago, the reactor was defueled, the control rods were disengaged from their mechanisms, primary system pump rotors were removed from the pumps and other physical changes were performed to make the reactor permanently inoperable. Core internals and primary system piping and components are entombed within the heavily shielded containment vessel which is sealed. No additional radioactivity will be produced, and the existing residual radioactivity will continue to decrease by radioactive decay. From 1981 until 1993, the ship was open to the public as a museum with no measurable radiation exposure to any member of the public. To prevent public access to potential contaminated or radiation areas in the ship, these areas will continue to be sealed and security for the ship will be maintained at the JRRF effectively similar to that in place at the PPDA pier.

In the unlikely event that radioactive waste is produced on the ship, all waste will be removed, packaged, and shipped offsite, or released in accordance with radiological control procedures that are in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the proposed activities associated with the license amendment for the *N.S. Savannah*, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite,

and no significant increase in individual or cumulative occupational or population radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, after leaving drydock, the *N.S. Savannah* will be towed to the JRRF using established navigation channels. It will be located within the existing boundary of the Reserve Fleet in the James River. No extensive preparation to the site will be required for the *N.S. Savannah*. It is intended to moor the *N.S. Savannah* alongside the decommissioned U.S. Army Corps of Engineers MH–1A Floating Nuclear Power Barge Sturgis.

The staff has determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant non-radiological environmental impact.

Based on the above, the Commission concludes that there are no significant environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Actions

Since the Commission concluded that there are no significant environmental impacts that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative to the proposed amendment request would be to deny the request. This denial would force the PPDA to remain as a co-licensee and the ship to be returned to the PPDA pier. However, the PPDA returned the ship to the MARAD in accordance with the charter agreement and the authorizing legislation (Pub. L. 96–311, August 28, 1980).

Alternative Use of Resources

No alternatives appear that will have different or lesser effect on the use of available resources.

Agencies and Persons Consulted

The NRC staff consulted the U.S. Coast Guard, and the States of South Carolina and Virginia in reviewing the request from the licensees.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for amendment dated May 19, 1994, as supplemented by letters dated May 24, and May 25, 1994. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, 27th day of May 1994.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13502 Filed 6–2–94; 8:45 am]

BILLING CODE 7590–01–M

Pacific Gas & Electric Co.; Withdrawal of amendment to Facility Operating License

[Docket Nos. 50–275 & 50–323]

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Pacific Gas and Electric Company (the licensee) to withdraw its February 4, 1992, application for an amendment to Facility Operating License Nos. DPR–80 and DPR–82, issued to the licensee for operation of the Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2, located in San Luis Obispo County, California. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 1, 1992 (57 FR 11112).

The purpose of the licensee's amendment request was: To revise Technical Specification 3/4.5.1 to increase the accumulator allowed outage time (AOT) from 1 hour to 8 hours for reasons other than a closed isolation valve; to revise the Action Statement to be consistent with the Applicability Statement by replacing the requirement to be in Hot Shutdown with a requirement to place the plant in Hot Standby with pressurized pressure less than or equal to 1000 psig; to revise the frequency of Surveillance 4.5.1.2 for the accumulator pressure and water level channels from 31 days to 92 days; and to revise the surveillance from a Channel Functional Test to an Analog Channel Operational Test.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 4, 1992, and (2) the staff's letters dated April 29, 1994, and May 26, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 26th day of May 1994.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Acting Project Manager, Project Directorate IV–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13501 Filed 6–2–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Clearance of a New Information Collection, Form RI 95–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. Form RI 94–7, Death Benefit Payment Rollover Election Form (FERS), provides FERS surviving spouses and surviving former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an IRA.

There are estimated to be 700 respondents for RI 94–7. It takes approximately 60 minutes to complete RI 94–7. The combined annual burden is 700 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E. Street, NW, room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis and Design, (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director

[FR Doc. 94–13461 Filed 6–2–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34129 ; File No. SR–Amex–91–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Addition of Options Series at 2½ Point Strike Price Intervals for Major Market Index Options

May 27, 1994.

On November 27, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to alter its strike price policy in order to introduce near-the-money[3] options series on the XMI at 2½-point strike (exercise) price intervals.[4]

Notice of the proposal was published for comment and appeared in the **Federal Register** on January 15, 1993.[5] No Comments were received on the proposed rule change.

In 1983, when the Exchange began trading index options, options series were introduced in 5-point strike price intervals for index values up to 200 and 10-point increments for index values above 200. Subsequently, the Exchange obtained Commission approval to list index options with 5-point strike price intervals when the value of the relevant index is above 200.[6] The Amex continues to follow this policy for all of the Exchange's index options with expirations up to one year; for longer-term index options, the Exchange may have strike price intervals as wide as 25 or 50 points.

The Amex proposes to amend its strike price policy to allow the Exchange to list near-the-money options on the XMI at 2½-point strike price intervals. The Amex has found that the current policy of 5-point strike intervals frequently results in in-the-money options that are often "too costly" and out-of-the money options that yield too little premium to attract uncovered or covered writers. The Amex believes that the proposal to narrow strike price intervals by increasing the number of available near-the-money strike prices will enable customers to more finely tailor their options positions to achieve their intended investment objectives. In addition, the Amex believes that providing customers with greater opportunities and flexibility will further enhance the depth and liquidity of the Amex's index options markets.

The Amex also believes, in connection with the reduction of the XMI to one-half its previous value,[7] that the addition of 2½-point strike intervals for near-the-money options will satisfy requests by investors to maintain the pre-split "Index-to-strike price ratio" (*e.g.*, from a 640 Index value with 5-point strike price intervals to a 320 Index value with 2½-point strike price intervals).

The Amex believes that the proposal will not result in a proliferation of strike prices since the 2½-point intervals will only be added to surround the XMI's current Index value. For this purpose, 2½ point strikes would only be added 10 points above or below the current Index value.[8] In addition, the Amex represents that listing near-the-money XMI options series at 2½ point price intervals will not adversely impact the capacity of OPRA or market information vendors. In this regard, the Amex notes that the OPRA system was upgraded in early November 1992 to accommodate up to 300 messages per second ("MPS"). The Exchange believes that this capacity is more than sufficient to accommodate the requirements of all OPRA participants, including the proposed 2½ point strike prices for the XMI, since the recent peaks in message traffic for all OPRA participants combined have been in the range of 100–125 MPS. In addition, the Amex believes that the additional options series necessitated by the proposed 2½ point strike prices for the XMI will have no impact on the ability of vendors to receive and process data.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10] Specifically, the Commission believes that the proposed listing of 2½ point strike price intervals for near-the-money XMI options will provide investors with more flexibility in the trading of XMI options, thereby protecting investors and furthering the public interest by allowing investors to establish XMI options positions that are better tailored to meet their investment objectives.

The Commission also believes that the Amex's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. Specifically, the Commission believes that by limiting the number of additional strikes to within 10 points above or below the current Index value, the Amex's proposal permits a fairly small absolute increase in the number of XMI strikes that may be outstanding at any one time. Further, the Commission notes that the proposal sets the maximum permissible number of additional 2½ point strikes; the Amex retains discretion to list fewer strike prices than allowed.

In addition, the Commission notes that the Amex has represented that there is customer interest in 2½ strikes for near-the-money XMI options. Specifically, the Exchange has stated that the existing 5-point strike intervals frequently result in in-the-money options that are "too costly" and out-of-the money options that yield too little premium to attract uncovered or covered writers. Moreover, the Amex believes that the proposed 2½ point strike intervals will satisfy requests by investors to maintain the pre-split "Index-to-strike price ratio" of the XMI. In light of the investor interest in the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] The Amex amended its proposal to define "near-the-money" as a strike price within 10 points above or below the current value of the Major Market Index ("XMI" or "Index"). Thus, if the XMI is at 310, the proposal would allow the Exchange to list 2½ point strikes between the range of 290 to 310. *See* Letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated March 4, 1993 ("March 4, 1993 Letter").

[4] On December 8, 1992, the Amex amended its filing to include a memorandum from Charles H. Faurot, Amex, to Howard Baker, Amex, dated December 2, 1992, which discusses the ability of the Options Price Reporting Authority ("OPRA") and market information vendors to accommodate the additional strike prices provided for under the proposal ("OPRA Capacity Statement"). *See* Letter from Ellen Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division, Commission, dated December 8, 1992.

[5] See Securities Exchange Act Release No. 31710 (January 8, 1993), 58 FR 4720.

[6] See Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2360 (order approving File No. SR–Amex–84–31).

[7] See Securities Exchange Act Release No. 29798 (October 8, 1991), 56 FR 51976 (order approving File No. SR–Amex–91–18).

[8] See March 4, 1993 Letter, *supra* note 3.

[9] See OPRA Capacity Statement, *supra* note 4.

[10] 15 U.S.C. 78f(6)(5) (1982).

2½ price strikes, and the proposal's limit on the number of strikes the Amex may list, the Commission believes that the proposal should provide the Amex with the flexibility to list additional strike prices in near-the-money XMI options in response to genuine customer interest and, at the same time, appropriately limit the number of XMI options series that may be outstanding at any one time. Finally, based on representations from OPRA,[11] the Commission is satisfied that the Amex and OPRA will have adequate computer processing capacity to accommodate the trading and quote dissemination demands of the additional strike prices that may be listed under the proposal.

In summary, the Commission believes that the benefits to be derived from the proposal in accommodating the needs and objectives of investors outweigh the possible adverse effects on market liquidity due to the dispersion of trading interest in more XMI options series. In making this determination, the Commission notes that the change is limited to near-the-money series in XMI options only. Nevertheless, the Commission expects the Amex to monitor additional strikes added under this proposal to ensure that there are no detrimental effects on the market for XMI options.

It is therefore ordered, pursuant to section 19 (b) (2) of the Act, [12] that the proposed rule change (File No. SR-Amex-91-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13472 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34127; File No. SR–CBOE–94–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Submission of Options Transaction Data for Trade Recording and Price Reporting Purposes

May 27, 1994.

On January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 6.51, "Reporting Duties," Interpretation and Policy .01, to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes through an electronic data storage medium approved by the Exchange.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33730 (March 8, 1994), 59 FR 11814. No comments were received on the proposed rule change.

Currently, CBOE Rule 6.51, Interpretation and Policy .01, requires both the buyer and the seller in a transaction to record on a card or ticket information concerning the transaction, including the buyer's or seller's assigned broker initial code and his clearing firm (if a market maker), the symbol of the underlying security, the type, expiration month and exercise price of the option contract, the transaction price, the number of contract units comprising the transaction, the time of the transaction, the name of the contra clearing firm member and the assigned broker initial code of the contra member. Under Interpretation and Policy .01, this information constitutes the "transaction record." The CBOE proposes to amend Interpretation and Policy .01 to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes through an electronic data storage medium approved by the Exchange.

Under current CBOE Rule 6.51, Interpretation and Policy .01, buyers and sellers must submit transaction data in paper form only, either on a trade ticket or transaction card. The CBOE believes that in today's market and operations technology environment, that limitation is unduly restrictive, and some CBOE members have requested the opportunity to submit transaction record data by means of electronic data transmission. Submission in that form would enable those members to enjoy the efficiency of reporting trades and prices to the CBOE through the same automated medium they use to report that information to their clearing firms. Accordingly, the CBOE seeks authority to approve particular electronic media in addition to paper that CBOE members may use for trade recording and price reporting purposes.

In administering the proposed rule change, the CBOE states that the Exchange will from time to time identify particular electronic media and formats acceptable for use under Exchange Rule 6.51 based on members' needs, and will inform members about acceptable media and formats through appropriate circulars. The CBOE expects to identify as acceptable only those electronic media that involve secure and tested technology.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with the protection of investors and the public interest.

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) and section 17A(a)(1)(A) of the Act.[4] Specifically, the Commission believes that the CBOE's proposal will provide buyers and sellers on the CBOE with an efficient and accurate means of recording options transactions and submitting price reporting information to the CBOE with an efficient and accurate means of recording options transactions and submitting price reporting information to the CBOE while preserving the CBOE's ability to create necessary and reliable audit trail information. The Commission believes that the electronic submission of transaction data should help to ensure the accuracy of the CBOE's audit trails by reducing the possibility of human error.[5] In turn, the audit trail information should help the CBOE to enforce compliance by its members with the federal securities laws and the CBOE's rules, thereby increasing the CBOE's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest, consistent with

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[11] See OPRA Capacity Statement, *supra* note 4.

[12] 15 U.S.C. 78s(b) (2) (1982).

[13] 17 CFR 200.30-3 (a) (12) (1993).

[1] 15 U.S.C. 78(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] On April 12, 1994, the CBOE submitted a letter clarifying that the proposal would allow buyers and sellers to submit transaction information through an electronic data storage medium acceptable to the Exchange and allow them to provide the information required for price reporting through an electronic data transmission link approved by the CBOE. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated April 8, 1994.

[4] 15 U.S.C 78f and 78q–1 (1982).

[5] Telephone conversation between Barbara Casey, CBOE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on April 22, 1994.

section 6(b)(5) of the Act. Moreover, the Commission finds that the proposal is consistent with section 17A(a)(1)(A) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

In addition, the CBOE has represented that it will approve only those electronic media that involve secure and tested technology for submitting options transaction data under CBOE Rule 6.51. The Commission expects the CBOE to notify the Commission of any changes in the technology approved by the Exchange for submitting options transaction data.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[6] that the proposed rule change (SR–CBOE–94–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13471 Filed 6–2–94; 8:45am]

BILLING CODE 8010–01–M

[Release No. 34–34128; File No. SR–CBOE–94–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modification of Fees for Failure to Observe OEX RAES Requirements

May 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, CBOE Rule 24.17, "RAES Eligibility in OEX," establishes eligibility standards under which individuals, member organizations, and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES") for Standard & Poor's 100 Index ("OEX") options. The CBOE proposes to amend CBOE Rule 24.17(a)(iii) to provide that an individual required to sign onto RAES immediately prior to expiration may apply to the OEX Floor Procedure Committee ("OFPC") for prospective relief from the log-on requirements during a particular expiration cycle. The CBOE also proposes to delete paragraph (iv), which states, among other things, that a member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the OFPC determines. In addition, the CBOE proposes to replace the current $500.00 fee for failing to comply with CBOE rule 24.17's log-on and log-off requirements with the following fee schedule: (1) A fee of $100.00 for one to three failures within one calendar year; (2) a fee of $250.00 for four to six failures within one calendar year; and (3) a fee of $500.00 for seven or more failures within one calendar year. Finally, the CBOE proposes to assess a fee for any joint account member or nominee of a member organization who has logged onto RAES and later terminates participation on RAES at any time prior to the next succeeding expiration date, unless the member participates in another OEX RAES account or terminates his membership with the Exchange.

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposed rule change is to eliminate the automatic disqualification provisions in CBOE Rule 24.17 and to reduce the fees now required of members under that rule for failure to observe the rule's log-on and log-off requirements. In addition, the proposal makes certain editorial changes to clarify CBOE Rule 24.17 without affecting its substance.

In May 1993, Exchange Rule 24.17 was amended to establish, among other things, more rigorous log-on and log-off requirements for participants in OEX RAES.[1] For example, group members who previously were logged on automatically by the Exchange must now log on at their own initiative each time they enter the trading crowd. Likewise, members who previously were not required to log off the system each time they left the trading crowd must now do so.

In view of such additional log-on and log-off requirements, the Exchange believes that the $500.00 fees currently due from members who do not log on or log off as required are excessive. The proposed rule change therefore establishes a new graduated fee schedule, under which the fee amount will increase in relation to the number of times within any one calendar year that a member does not log on or log off as required. Specifically, during each calendar year, a $100.00 fee will be due for each of the first three times that a member fails to observe the log-on or log-off requirements; a $250.00 fee will be due for each of the fourth through sixth such times; and a $500.00 fee will be due for all subsequent times. In addition, the CBOE proposes to assess a $500.00 fee on any member participating in a joint account or nominee account held by a member organization if the member logs onto OEX RAES but thereafter terminates participation prior to the next succeeding expiration date without either joining another OEX RAES account or terminating membership on the Exchange.

Members who fail to observe CBOE Rule 24.17 can be subject to a variety of sanctions.[2] The CBOE states that the

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[6] 15 U.S.C. 78s(b)(2) 1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] See Securities Exchange Act Release No. 32248 (April 30, 1993), 58 FR 27596 ("RAES Fee Approval Order").

[2] Under CBOE Rule 24.17(b)(v), the OFPC may bar, restrict, or condition a joint account's participation in RAES if any member fails to meet the OEX market maker requirements. Under CBOE rule 24.17(c)(vi), the OFPC may bar, restrict, or condition a member organization's participation in RAES if any nominee on RAES in OEX fails to meet the OEX market maker requirements. CBOE Rule 24.17(e)(ii) provides several sanctions for failures to comply with the requirements of CBOE Rule 24.17, including disciplinary action under, among others, CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," and Chapter XVII, "Discipline," of the CBOE's rules. In addition, the OFPC may take remedial action, including suspension of a member's eligibility for participation on RAES and other remedies appropriate under Chapter VIII.

Continued

fees suggested in the proposed rule change, like the fees imposed currently under CBOE Rule 24.17, do not constitute disciplinary action. Nevertheless, the review procedures in Chapter XIX, "Hearings and Review," of the Exchange's rules will be available with respect to the assessment of the proposed fees. Under those procedures, a member may seek verification of fees charged by the Exchange. If the member is not satisfied with the verification of fees, he may request a hearing before a panel of three or more members of the Exchange's Appeals Committee. At the hearing the appellant may be represented by counsel and may cross-examine witnesses.[3]

In addition, the decision of the Exchange's Appeals Committee panel is subject to review by the Board of Directors of the Exchange on the Board's own motion, on the written request of the appellant, or at the request of the Exchange's President or the relevant Exchange Committee Chairman. The review must be conducted by the Board or by a Board Committee consisting of at least three Directors (other than Directors who sat on the Appeals Committee in the matter). An appellant has an opportunity to address issues raised specifically by the Board or the Committee, and in addition may submit oral or written arguments if the Board so allows in its discretion.[4]

The CBOE states that in a related context the Commission has noted the appropriateness of fees like those proposed herein, particularly when coupled with appeal rights. Specifically, in approving a CBOE proposal that included procedures for contesting the fees assessed for delayed submission of trade data, the Commission stated that "Although such formalized procedures are unusual for challenging fee assessments, they actually make the imposition of the fee fairer by allowing members to challenge erroneous fee charges. Moreover, these procedures are reasonably designed to afford a member assessed a fee the opportunity to challenge the veracity of the assessments."[5]

The Exchange believes that the proposed fee schedule is appropriate and equitable given the additional requirements imposed on participants in OEX RAES in the RAES Fee Approval Order. Furthermore, to ensure that all members are treated alike under the RAES Fee Approval Order, the Exchange will apply the revised fee schedule retroactively from April 30, 1993, the effective date of the RAES Fee Approval Order.

The proposal also deletes the automatic disqualification provisions that appear in current CBOE Rules 24.17(a)(iv), (b)(vii), and (c)(viii). The CBOE believes these deletions are appropriate in view of the new requirements imposed under the RAES Fee Approval Order and the fee structure imposed hereunder.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5), in particular, in that it is designed to allocate reasonable dues, fees and charges among CBOE members and to promote the efficiency and effectiveness of the CBOE's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13473 Filed 6–2–94; 8:45 am]

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"Market Makers, Trading Crowds, and Modified Trading Systems," of the CBOE's rules.

[3] See CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing."

[4] See CBOE Rule 19.5, "Review."

[5] *See* Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (order approving File No. SR–CBOE–90–06).

[Release No. 35–26058]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 27, 1994.

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 thereunder. 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 thereto 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 June 20, 1994 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 shall 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 said date, the application(s) and/

or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–7932)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, its wholly owned nonutility subsidiary companies, Southern Electric International, Inc. ("SEI"), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 and Southern Company Services, Inc. ("SCS"), 64 Perimeter Center East, Atlanta, Georgia 30346, and Southern's operating electric utility subsidiary companies Southern Nuclear Operating Company, 42 Inverness Center Parkway, Birmingham, Alabama 36242, Alabama Power Company, 600 Piedmont Avenue NE., Atlanta, Georgia 30308; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; Georgia Power Company, 333 Piedmont Avenue NE., Atlanta, Georgia 30308; Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501; and Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401 ("Operating Companies"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and Rules 43, 45, 46, 53, 54, 86, 87, 90 and 91 thereunder.

By Commission order dated October 20, 1987 (HCAR No. 24476) ("1987 Order"), SEI was authorized to engage in the design, development, construction, ownership and operation of cogeneration and independent power facilities within and outside the United States. SEI also provides technical services to industrial and commercial concerns, unaffiliated utilities and foreign governments in both domestic and international markets, and markets intellectual property acquired or created by Southern system companies to unaffiliated third parties in accordance with Commission orders dated July 17, 1981 and December 18, 1981 (HCAR Nos. 22132 and 22315A) ("Original Orders").[1]

As a part of a plan to reorganize various non-utility businesses of Southern and its subsidiaries along functional lines, Southern and SEI propose in this application-declaration to amend and restate SEI's existing financing and operational authority, SEI, SCS and the Operating Companies also propose to enter into intrasystem service agreements pursuant to which such companies may render services and sell goods to "exempt wholesale generators," or "EWGs," as defined in Section 32 of the Act, and "foreign utility companies," or "FUCOs," as defined in Section 33, as well as to associate companies that own qualifying facilities ("QFs") as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), or other facilities that SEI may hereafter be authorized to acquire.

Southern and SEI have adopted a plan of reorganization pursuant to which SEI proposes to organize and acquire all of the stock of a newly organized Delaware corporation ("Newco") in exchange for certain assets of SEI consisting primarily of rights under certain existing consulting agreements with third parties and accounts receivable associated therewith, which will be assigned to Newco; computers; office equipment and furniture; and interests in certain software programs and other proprietary technology. Newco will also assume certain liabilities of SEI including accounts payable, accrued pension and retirement costs associated with employees to be transferred to Newco, and certain loss reserves under existing contracts. Immediately thereafter, the shares of Newco will be distributed to Southern as a dividend distribution, and Newco and Development will be merged pursuant to a plan adopted under applicable state law.

SEI and Southern propose to relinquish the authority granted by the Commission in the Original Orders and the 1987 Order upon the effective date of the Commission's order relating to this application-declaration and to the application of Southern and Development, except with respect to any contracts and investments that are entered into or made by SEI prior to the effective date of such orders in reliance upon and in accordance with the Original Orders or the 1987 Order.

SEI proposes to continue to engage in preliminary project development activities ("Development Activities") relating to the potential acquisition and ownership of independent power facilities, including QFs and facilities to be owned or operated by EWGs and FUCOs, and other power production facilities located within the service territories of the Operating Companies or the service territories of other members of the Southeastern Electric Reliability Council, together with facilities and equipment that are ancillary to the foregoing, such as may be used for fuel production, conversion, handling and/or storage; electrical transmission; and energy management, recovery and efficiency (hereinafter referred to collectively as "Projects"). With the exception noted below, in any case in which SEI's Development Activities culminate in a proposal to acquire the securities of or other interest in any EWG or EUCO, it is intended that Southern, rather than SEI, would consummate the acquisition in an exempt transaction pursuant to section 32 or 33 of the Act, as applicable, subject to complying with all rules and regulations promulgated thereunder. Any acquisition by Southern or SEI of an interest in any other type of Project, and any related financing, would be the subject of separate filings with this Commission.

SEI requests authority to acquire the stock of and provide needed working capital to one or more foreign subsidiaries through which SEI would conduct its project Development Activities. SEI represents that in no case will any such subsidiary, directly or indirectly, acquire, own or operate any significant assets or facilities, other than a bank account, leased office space and related office equipment, issue or acquire any securities, other than common shares issued to SEI, or provide services or sell goods to any associate company. The sole function of any such subsidiary would be to engage in Development Activities on behalf of SEI in a foreign country or countries whose laws would subject SEI to significant restrictions or penalties if SEI were itself to maintain a legal presence in any such country. The capitalization of any such subsidiaries is expected to be less than $50,000.

SEI also proposes to render project development, engineering, design, construction and construction management, operating, fuel management, maintenance and power plant overhaul, and other similar kinds of managerial and technical services to both affiliated Project entities and to non-affiliated developers, operators and owners of independent power projects and foreign and domestic utility systems. SEI proposes to render such services utilizing its own work force, and personnel and other resources of SCS and the Operating Companies obtained pursuant to service agreements ("Service Agreements") as described below. SEI also proposes that in conjunction with providing services to non-affiliates, it may enter into separate agreements to sell or license intellectual property it has created or acquired from

[1] In a related proceeding (see File No. 70–8173), Southern proposes to restate the operational and financing authority of The Southern Development and Investment Group, Inc. ("Development"), also a wholly owned nonutility subsidiary of Southern. It is proposed that Development will succeed to certain of SEI's consulting activities (generally, consulting activities that are not related to domestic power generation or foreign generation, transmission, or distribution), and to SEI's licensing of intellectual property, among other business activities.

non-affiliates in connection with its authorized business activities.

All services rendered by SEI to non-affiliates will be based upon the fair market value thereof. SEI also proposes to provide such services and sell goods to any Project entity that is an associate company (including but not limited to any EWG, FUCO, or QF) at fair market prices, and requests an exemption pursuant to section 13(b) from the requirements of rules 90 and 91 as applicable to such transactions in any case in which any one or more of the following circumstances shall obtain:

1. Such Project entity derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

2. Such Project entity is an EWG which sells electricity at market-based rates which have been approved by FERC or the appropriate state public utility commission, or a QF which sells electricity at the purchaser's "avoided cost" determined in accordance with the regulations under PURPA, or sells electricity at rates negotiated at arms'-length with large industrial or commercial customers purchasing such electricity for their own use and not for resale;

3. Such Project entity sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that: (i) the purchaser of such electricity is not an associate company of SEI within the Southern system, and (ii) the terms and conditions (including price) of the contract pursuant to which SEI agrees to provide such services or goods have been expressly approved by the holders of a majority of the equity interests of such Project entity other than Southern or any associate company of Southern.

SEI owns the exclusive rights to a proprietary computer-based remote generator dispatch and control program, known as "Standby Capacity Network" ("SCN"). The SCN program enables a utility company remotely to access the capacity associated with stand-by or emergency generators owned by its large customers, such as hospitals, factories, and office buildings and operate the generators in parallel with its own grid. An SCN program could be implemented pursuant to a contract between a utility and SEI under which SEI would agree to install certain equipment (primarily controls) incorporating its proprietary software program and interconnection equipment and to act as the utility's agent in operating, maintaining and fueling the customer's standby generator. Under such an arrangement, SEI would be compensated by the utility. SEI would not seek to acquire any interest in the customer's generating equipment, and would not take title to the electricity generated. SEI would retain all right, title and interest to the proprietary software used in SCN.

SEI proposes to market the SCN program to both affiliated and unaffiliated utilities and/or their respective customers. The program and related services would be sold to unaffiliated parties at prices to be negotiated based upon the fair market value thereof. As currently required under the terms of the Original Orders, SEI will make the proprietary technology incorporated into the SCN program available to the Operating Companies without charge (except for the actual expenses incurred by SEI in making such program available). If an Operating Company requests SEI to provide any related service, e.g., software support, training of Operating Company personnel, maintenance of the customer's equipment, or the like, SEI would be the associate company for the costs of such services, determined in accordance with rules 90 and 91.

Under the Original Orders, SEI has entered into Service Agreements with SCS and each of the Operating Companies (other than Savannah, which was not then a subsidiary of Southern) pursuant to which personnel and other resources of SCS and the Operating Companies may be made available to SEI, upon request, to support SEI in connection with its authorized activities. Under these agreements, SEI is obligated to reimburse SCS or an Operating Company, as the case may be, for the cost of such services, determined in accordance with Rules 9 and 91. The cost of services provided by an Operating Company to SEI includes all direct charges and certain indirect costs, such as pension costs, insurance, payroll taxes, and payments to employee benefits plans, and a portion of the administrative and general expenses of the Operating Company.

The existing Service Agreements also obligate SEI to make any new intellectual or proprietary property, processes, programs, computer or other data bases, support services, training and other facilities and techniques developed in the course of SEI's business available for utilization by other Southern system companies without charge, except for the actual expenses incurred in making the same available, to the extent that SEI has or retains proprietary rights therein. Under the Service Agreements, SEI has a reciprocal right to receive such intellectual property from SCS and the Operating Companies without charge, except for the actual expenses incurred in making the same available.

SCS and the Operating Companies propose to continue to render services and provide other resources to SEI in connection with SEI's authorized activities in accordance with the existing Service Agreements, as amended, to reflect the changes to SEI's authorized business activities and to comply with the Commission's rules relating to the rendering of services or sale of goods directly by SEI or indirectly by the Operating Companies and SCS to EWGs and FUCOs in which Southern holds an interest.

SCS and the Operating Companies will not, without requesting the further approval of the Commission, render any services or sell any goods directly or indirectly to any EWG or FUCO in which Southern holds an interest, except pursuant to the Service Agreements, as herein proposed to be amended.

Southern proposes to invest in SEI up to an aggregate of $250,000,000 from time to time through December 31, 1998, in addition to any investments in SEI that Southern shall have made pursuant to previous authorizations, including but not limited to the 1987 Order, prior to the effective date of the order in this proceeding. It is proposed that such additional investments may take the form of any combination of cash capital contributions to SEI, loans to SEI by Southern, and loans to SEI by one or more lenders other than Southern that are guaranteed by Southern.

SEI proposes to issue promissory notes ("Notes") from time to time through December 31, 1998 to Southern or to lenders other than Southern which have been guaranteed by Southern, provided that the sum of the aggregate principal amount of Notes at any time outstanding and Southern's additional investments in SEI shall not exceed $250 million. The Notes would have maturities no later than December 31, 2003, and would bear interest at a rate of not more than 3% over the prime rate at the bank to be designated by Southern in the case of Notes issued to lenders other than Southern, and a rate of not more than the prime rate in the case of Notes issued to Southern. In connection with any sale of Notes to lenders other than Southern, a commitment fee may be paid in an amount not greater than ½ of 1% of the principal amount of the Note. It is anticipated that any such Notes may be guaranteed by Southern as to principal, premium, if any, and interest. It is further proposed that the Notes issued to Southern may, at the option of Southern, be converted to

capital contributions to SEI through Southern's forgiveness of the debt (including any accrued interest) represented thereby.

Southern also proposes, from time to time, to guarantee or act as indemnitor of commercial sureties required to support bid bonds and performance and other obligations (other than securities or other financial instruments) issued or undertaken by SEI in connection with its authorized activities.

It is therefore proposed that Southern may (i) provide such guarantees of, and similar provisions and arrangements concerning, the performance and undertaking of other obligations by SEI (or any subsidiary of SEI), or of any Project entity (including but not limited to EWGs and FUCOs) in which Southern holds a direct or indirect interest, and of other obligations relating to SEI's authorized activities, and (ii) provide such indemnifications of and with respect to persons acting as surety on bonds or other obligations on behalf of such companies, in an aggregate amount outstanding at any one time of $800,000,000 through December 31, 2003; provided, that any guarantees or indemnifications outstanding at December 31, 2003 shall continue until expiration or termination in accordance with their terms; and provided further that the aggregate amount of such authorized guarantees or indemnifications of sureties shall be reduced dollar for dollar by any similar guarantees or indemnifications of sureties made or incurred by Southern pursuant to authority requested in File No. 70–8173 in connection with the business activities of Development.

As a further limitation to the foregoing, Southern states that the aggregate maximum amount of its exposure at any one time under all performance guarantees or indemnification or similar arrangements entered into on behalf of subsidiary companies that are EWGs or FUCOs shall not exceed $250,000,000, and that such amount shall be treated as part of Southern's "aggregate investment" in all such entities for purposes of rule 53(a). Southern proposes to negotiate specific guarantees and similar provisions and arrangements with third parties, and indemnifications of sureties, as the need to do so arises, without further Commission authorization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13515 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20321; 811–5827]

Templeton Tax Free Trust; Notice of Application

May 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Templeton Tax Free Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 31, 1994, and amended on May 20, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secetary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 700 Central Avenue, St. Petersburg, Florida 33701–3628.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end non-diversified management investment company, is organized as a business trust under the laws of the Commonwealth of Massachusetts. On July 19, 1989, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act, and a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on September 15, 1989, and the public offering of applicant's shares commenced on that date.

2. At a meeting held on February 27, 1993, applicant's board of trustees approved agreements and plans of reorganization providing for the transfer of all of the assets of applicant's two series to two other investment companies. These agreements provided for the transfer of all of the assets of (1) Templeton Insured Tax Free Fund ("Templeton Insured") to Franklin Insured Tax-Free Income Fund ("Franklin Insured"), a series of Franklin Tax-Free Trust, in exchange for shares of Franklin Insured, and (2) Templeton Tax Free Money Fund ("Templeton Money") to Franklin Tax-Exempt Money Fund ("Franklin Money") in exchange for shares of Franklin Money.

3. The trustees determined that the proposed reorganizations were in the best interests of the shareholders of each series because they would permit shareholders to pursue their investment goals in larger funds, which would have enhanced ability to effect portfolio transactions on more favorable terms and should have greater investment flexibility. The trustees also decided that the reorganizations would enable shareholders to obtain the benefits of economies of scale.

4. Templeton Global Bond Managers ("Templeton Global"), a division of Templeton Investment Counsel, Inc. ("TICI"), is the investment adviser for Templeton Insured and Templeton Money. Franklin Advisers, Inc. is the investment adviser for Franklin Insured and Franklin Money. TICI and Franklin Advisers, Inc. are wholly owned subsidiaries of Franklin Resources, Inc. Accordingly, Templeton Insured and Franklin Insured, and Templeton Money and Franklin Money, may be deemed to be affiliated persons by reason of being under the control of investment advisers that are themselves under common control. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction.[1] Consequently,

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers. The staff of the Division of Investment Management has stated that it would not recommend that the Commission take enforcement action under section 17(a) of the Act if investment companies that are affiliated persons solely by reason of having investment advisers that are under common control rely on rule 17a–8. *See,*

Continued

the trustees determined, in accordance with rule 17a–8, that the purchase of the assets of the two series by Franklin Insured and Franklin Money was in the best interests of the shareholders of the series, and that such purchases would not result in any dilution to the interests of the existing shareholders of the series.

5. A registration statement on Form N–14 was filed with the SEC on May 28, 1993, and the proxy statement/prospectus contained therein was furnished to applicant's shareholders on or about July 15, 1993. The holders of a majority of the outstanding voting shares of each of Templeton Insured and Templeton Money approved agreements and plans of reorganization with Franklin Insured and Franklin Money, respectively, at a special meeting of shareholders held on August 27, 1993.

6. On August 27, 1993, there were 18,793,312 shares with a net asset value of $1 per share of Templeton Money. On that date, Franklin Money acquired all of the assets of Templeton Money in exchange for shares of Franklin Money. The number of full and fractional shares that were exchanged for the assets of Templeton Money was determined by dividing the net asset value per share of Templeton Money as of that date by the net asset value per share of Franklin Money. The result was then multiplied by the number of outstanding shares of Templeton Money. Immediately following the acquisition, Templeton Money dissolved and distributed the shares of Franklin Money *pro rata* to its shareholders of record.

7. On August 27, 1993, there were 2,773,418 shares with a net asset value of $11.7566 per share of Templeton Insured, which had aggregate net assets of $32,605,919. On that date, Templeton Insured distributed to its shareholders $.085 per share of net investment income and $.03 per share of net realized capital gains. Shortly thereafter, Franklin Insured acquired all of the assets of Templeton Insured in exchange for shares of Franklin Insured. The number of full and fractional shares of Franklin Insured that were exchanged for the assets of Templeton Insured was determined by dividing the net asset value per share of Templeton Insured as of that date by the net asset value per share of Franklin Insured. The result was then multiplied by the number of outstanding shares of Templeton Insured. Immediately following the acquisition, Templeton Insured dissolved and distributed the shares of Franklin Insured *pro rata* to its shareholders of record.

8. The expenses attributable to the acquisition of Templeton Insured by Franklin Insured, including printing and mailing costs for proxy statements and related documents, amounted to $12,565.77. Templeton Global, Franklin Advisers, Inc., Templeton Insured, and Franklin Insured each paid one quarter of this amount. The expenses attributable to the acquisition of Templeton Money by Franklin Money, including printing and mailing costs for proxy statements and related documents, amounted to $16,860.82. Templeton Global, Franklin Advisers, Inc., Templeton Money, and Franklin Money each paid one quarter of this amount.

9. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was it a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13516 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

e.g., Capitol Mutual Funds and Nations Fund Trust (pub. avail. Feb. 24, 1994).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commuter Fitness Determination of Dolphin Express Airlines, Inc. D/B/A Dolphin Airlines

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 94–5–39, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Dolphin Express Airlines, Inc. d/b/a Dolphin Airlines is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than June 6, 1994.

ADDRESSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, X–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: May 27, 1994.

Robert S. Goldner,

Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13508 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–62–P–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on June 15, 1994, at 9:30 a.m.

ADDRESS: The meeting will be held at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held at 9:30 a.m., Wednesday, June 15, 1994, at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC. The agenda for this meeting will include briefings on:

- Special visual flight rules operations;
- Mode S Study; and
- Status of the Unmanned Air Vehicle Working Group

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the

meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC., on May 27, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 94–13519 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Arcata/Eureka Airport (ACV), Arcata, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Arcata/Eureka Airport (ACV) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 Pub. Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Murray, Public Works Director, County of Humboldt at the following address: 1106 Second Street, Eureka, California 95501. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Humboldt under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata/Eureka Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 20, 1994, the FAA determined that the application to impose and use a PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 26, 1994.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: August 2, 1994.

Proposed charge expiration date: August 30, 1996.

Total estimated PFC revenue: $384,500.00.

Brief description of the proposed projects: Matching funds for Arcata Projects 3–06–0010–15 & 3–06–0010–16 to cover Runway 24–32 resurfacing project, Kjer Road Property Acquisition at Arcata for Runway Protection Zone, Arcata Airport Fire Hydrant System Replacement and Arcata Airport Building Demolition; Murray Field Rehabilitation of Runway 11–29, Taxiways & Aprons, Construct Access Road, Fence Access Road & Parking Lot and Install Emergency Generator; Rohnerville Emergency Generator Replacement; and, Humboldt County Airport Master Plans & Airport Layout Plans Update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt, CA.

Issued in Hawthorne, California, on May 20, 1994.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–13520 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Preemption Determination No. PD–7(R); Docket No. PDA–12(R)]

Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Administrative determination of Preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Chemical Waste Transportation Institute and National Tank Truck Carriers, Inc.

STATE LAWS AFFECTED: Code of Maryland Regulations 26.10.01.16.D and 26.13.04.01.F.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 et seq., and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: Maryland regulations requiring certification of operators of motor vehicles loading or unloading oil or "controlled hazardous substances" in Maryland are preempted by 49 App. U.S.C. 1811(a)(2) as they apply to operators of vehicles transporting hazardous materials not domiciled in Maryland. These requirements are stricter than operator training requirements promulgated under the HMTA, and therefore are obstacles to accomplishing the full purposes and objectives of the HMTA. As applied to operators domiciled in Maryland, the requirements are not preempted.

FOR FURTHER INFORMATION CONTACT: Charles B. Holtman, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001, telephone number (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Application for Preemption Determination

On April 19, 1993, the Chemical Waste Transportation Institute (CWTI) and the National Tank Truck Carriers,

Inc. (NTTC) jointly applied for a determination of preemption pursuant to 49 CFR 107.203. The CWTI/NTTC application seeks an administrative determination that the HMTA preempts State of Maryland certification requirements for operators of vehicles loading or unloading oil or "controlled hazardous substances" in Maryland.

On May 19, 1993, RSPA published a Public Notice and Invitation to Comment, providing for comments until June 23, 1993, and rebuttal comments until August 29, 1993. 58 FR 29322. Eight transporters of oil, hazardous waste or hazardous materials, one transporter association and one environmental services firm submitted comments supporting preemption of one or both sets of certification requirements. The Maryland Department of the Environment, Waste Management Administration (MDE), submitted comments opposing preemption of the requirements for operators of oil transport vehicles, but took no position on the requirements for operators of controlled hazardous substance transport vehicles. The Commonwealth of Massachusetts, Department of Environmental Protection, Division of Hazardous Materials (MassDEP), submitted comments opposing preemption in part. CWTI/NTTC submitted rebuttal comments responding to those of MDE and MassDEP.

A. Maryland Requirements for Operator Certification

The two provisions of Maryland law for which CWTI/NTTC request a determination of preemption impose certification requirements on operators of motor vehicles used to transport oil or "controlled hazardous substances."

1. Oil Transporter's Certificate

The first certification requirement for which CWTI/NTTC seek a finding of preemption is Code of Maryland Regulations (COMAR) 26.10.01.16.D. This regulation, issued pursuant to general statutory authority in Environment Article § 4–405, Annotated Code Maryland, prescribes that "[a] vehicle used in the transport or transfer of oil shall be operated by a driver possessing a valid Oil Vehicle Operator's Certificate" issued by MDE. Read in conjunction with COMAR 26.10.01.17.A, the requirement applies only to operators of oil cargo tank vehicles. Further, it applies only to vehicles into which oil is loaded, or from which it is unloaded, in Maryland; it does not apply to operators of vehicles that simply pass through the State. COMAR 26.10.01.17.B. The certificate is issued "after the driver has completed an examination and has obtained a passing grade indicating his knowledge of the procedures employed for the safe handling of oil, oil spill control measures and oil spill reporting requirements." COMAR 26.10.01.17.A(2). The operator must carry the certificate whenever engaged in the transfer or transport of oil. COMAR 26.10.01.17.A(4).

An operator must preregister for the examination, which is given at five in-state locations and at out-of-state business locations as approved by MDE. There is no fee for the examination or the certificate. The certificate is valid for five years.

2. Controlled Hazardous Substance Transporter's Certificate

The second certification requirement for which a finding of preemption is sought is COMAR 26.13.04.01.F(1). This provision, enacted pursuant to Environment Article § 7–252(b), Annotated Code of Maryland, states:

> A person may not transport any CHS [controlled hazardous substance] from any source in the State or to any CHS facility in the State unless a driver certificate has been issued for the vehicle driver.

A "controlled hazardous substance" (CHS) is

(1) Any hazardous substance that [MDE] identifies as a controlled hazardous substance under th[e] subtitle; or

(2) Low-level nuclear waste.

Env't Article § 7–201(b), Ann. Code Md. The term includes all materials designated by the U.S. Environmental Protection Agency as hazardous waste under the Resource Conservation and Recovery Act (RCRA), 40 U.S.C. §§ 6901 et seq. Env't Article § 7–201(m)(2). Although the definition of CHS is broader, CWTI/NTTC states, and MDE does not contest, that Maryland applies the certification requirement only to transporters of RCRA hazardous waste. See also COMAR 26.13.04.01.A(1) ("These regulations establish standards which apply to persons transporting hazardous waste within the State.").

The certificate is issued on evidence of "satisfactory completion of an approved training program," COMAR 26.13.04.01.F(3)(c), which must cover:

> (a) Training in the requirements necessary to transport hazardous waste. Emphasis should be placed on the ability to verify proper DOT shipping names, hazard class and EPA waste codes. Special attention should be directed to the Maryland Hazardous Waste Manifest, other state manifest requirements, and the proper disbursement of manifest copies.
>
> (b) Training in the required labeling and marking of all containers of 110 gallons or less.
>
> (c) Training in Placarding. All drivers of vehicles transporting hazardous waste shall be able to appropriately placard their truck according to the DOT regulations under COMAR 11.16.01 (49 CFR 172 Subpart F).
>
> (d) Training in the Federal Motor Carrier Safety Administration [sic] regulations including proper maintenance of a driver's daily log.
>
> (e) Training in emergency procedures to follow in case of an accident or spill.
>
> (f) Training in Maryland's hazardous waste regulations and law.

COMAR 26.13.04.01.F(4). The regulations further stipulate that a training program instructor must successfully have completed an approved instruction training program or must have five years of experience in the trucking industry, with at least two years of involvement in safe driving activities or training. COMAR 26.13.04.01.F(5). MDE may require from an operator "satisfactory completion of an approved written examination." COMAR 26.13.04.01.F(6).

The certificate must be carried in the vehicle during transportation of CHS. COMAR 26.13.04.01.F(3)(b). It is valid for three years, subject to payment of an annual $20 fee. COMAR 26.13.04.01.F(2),(3)(a).

B. Hazardous Materials To Which Maryland Requirements Apply

As summarized above, the Maryland certification requirements apply to operators of motor vehicles transporting hazardous waste and cargo tank vehicles transporting oil when those vehicles are loaded or unloaded within the State of Maryland.

An oil is a hazardous material subject to the HMTA and HMR if it meets the criteria of any HMR hazard class. Most oils that are designated as hazardous materials are designated because they meet criteria for flammability, 49 CFR 173.120(a), or combustibility, 49 CFR 173.120(b). If an oil is not flammable or combustible, does not meet the criteria for any other hazard class, and is not among a small number of individually specified hazardous materials, 49 CFR 172.101(b)(1), it is not a designated hazardous material. Numerous oils, such as lubricating and vegetable oils, are not ordinarily designated hazardous materials.

Accordingly, the Maryland oil cargo tank operator certification requirement applies to the transport of both oils that are hazardous materials and those that are not. Operator certification requirements for the transport of oils that are not hazardous materials are not subject to preemption by the HMTA.

This preemption determination pertains to the oil cargo tank operator certification requirement only as it applies to the transport of oils that are hazardous materials.

In addition, the HMR do not apply to the highway transportation of oil by an intrastate carrier if that oil is not a hazardous waste, hazardous substance, flammable cryogenic liquid or marine pollutant. 49 CFR 171.1(a)(3); but see 58 FR 36920 (July 9, 1993), correction at 58 FR 38111 (July 15, 1993)(notice of rulemaking proposing to extend the HMR to intrastate highway carriage). Accordingly, this preemption determination does not apply to the transportation by intrastate highway carriers of oil not in the categories enumerated in 49 CFR 171.1(a)(3).

The Maryland statute under which the CHS vehicle operator certification requirement is enacted defines CHS broadly, to include RCRA hazardous waste, low-level nuclear waste and any other substance determined by MDE to be injurious to plant, animal or aquatic life. Env't Article § 7–201(b), Ann. Code Md. As noted above, however, the certification requirement is applied only to operators of vehicles transporting RCRA hazardous waste. Thus, hereafter, the CHS vehicle certification requirement will be referred to as the hazardous waste vehicle operator certification requirement.

RCRA hazardous waste, as designated pursuant to 42 U.S.C. 6921 by the Administrator of the U.S. Environmental Protection Agency (EPA), is a hazardous material under the HMR. 49 CFR 171.8 ("Hazardous material") (as amended at 55 FR 52930, 52935 (Nov. 5, 1992)); see also 49 CFR 171.3(a) ("No person may offer for transportation or transport a hazardous waste * * * in interstate or intrastate commerce except in accordance with the requirements of [the HMR]."). Both interstate and intrastate hazardous waste transporters are subject to the HMR. 49 CFR 171.1(a).

In the preemption analysis that follows, the Maryland certification requirements are compared to HMTA requirements under the "dual compliance" and "obstacle" tests of 49 App. U.S.C. 1811(a). See Section II, below. For purposes of the dual compliance test, the hazardous waste vehicle operator certification requirement is considered as written. The obstacle test, however, looks at the requirement "as applied or enforced." 49 App. U.S.C. 1811(a)(2). Therefore, under this test, the requirement is considered only as it is applied to the transportation of RCRA hazardous waste.

C. HMTA Training and Certification Requirements for Motor Vehicle Operators

General training requirements for persons packaging, offering or transporting hazardous materials are found in the HMR at 49 CFR 172.700-.704. These requirements apply to "hazmat employees," which term includes, among others, those who "[o]perate[ ] a vehicle used to transport hazardous materials." 49 CFR 172.702(b), 171.8 ("Hazmat employee"). Each "hazmat employee" must receive, at least every two years, three types of training: (1) Training to provide general familiarity with the HMR and a general ability to recognize and identify hazardous materials consistent with HMR standards; (2) training specific to the hazardous material functions the employee performs; and (3) training in workplace safety and emergency response. 49 CFR 172.704(a). Required training is not further specified; instead, the regulations contemplate that hazmat employees will be trained in a manner best suited to the hazardous materials transportation functions they perform. See 57 FR 20944, 20949 (May 15, 1992)(preamble to final rule enacting 49 CFR 172.700–.704).

In addition, operators of motor vehicles transporting hazardous materials must be trained in accordance with modal-specific requirements of 49 CFR 177.816. Training subjects include vehicle inspection and operation; requirements pertaining to attendance, parking, smoking, routing and incident reporting; and loading and unloading. 49 CFR 177.816(a). Cargo tank operators must receive specialized training in tank emergency control features, special vehicle handling characteristics, tank loading and unloading, properties and hazards of materials transported, and tank retest and inspection requirements. 49 CFR 177.816(b). Under section 177.816, operators must be trained in applicable requirements of parts 383, 387 and 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR parts 350–399.

Part 383 specifies requirements for obtaining a Commercial Driver's License (CDL), including requirements for the tank vehicle endorsement, 49 CFR 383.119, and the hazardous materials endorsement, 49 CFR 383.121. Section 177.816(c) provides that the training requirements of sections 177.816(a) and (b) may be satisfied by compliance with the CDL requirements for the tank vehicle or hazardous materials endorsement. Sections 390.3(e)(2) and 392.1 together require operator training in all aspects of the FMCSR. They are incorporated into the HMR as well by 49 CFR 177.804, as they apply to interstate operators of motor vehicles transporting hazardous materials.

Both 49 CFR 172.704(d) and 49 CFR 177.816 require that training documentation be retained; 49 CFR 172.702(d) requires that an employer test its employees. No provision of the HMR, however, requires that evidence of training be submitted to, or that operators be tested or certified by, a governmental body. A vehicle operator may comply with 49 CFR 177.816 by passing an examination and obtaining the CDL with a tank vehicle or hazardous materials endorsement. 49 CFR 177.816(c)(1).

Nonetheless, this is an alternative means of complying with the regulation, and is not required.

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It "replace[d] a patchwork of state and federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Pub. L. 93–633, § 112(a), 88 Stat. 2161 (1975). Congress intended this provision "to preclude a multiplicity of State regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974).

Thereafter, DOT's Materials Transportation Bureau (MTB), predecessor of RSPA's Office of Hazardous Materials Safety, implemented HMTA preemption through the issuance of inconsistency rulings. Inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application [for] a waiver of preemption pursuant to section 112(b) of the HMTA." Inconsistency Ruling No. 2 (IR–2), 44 FR 75566, 76657 (Dec. 20, 1979).

In the 1990 amendments to the HMTA, Pub. L. 101–615 (Nov. 16, 1990),

preemption under the HMTA was strengthened on the basis of the following Congressional findings:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

49 App. U.S.C. 1801 note. In amending the HMTA, Congress affirmed that "uniformity was the linchpin" of the statute. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d 1571, 1575 (10th Cir. 1991). Unless a waiver of preemption is granted by DOT, the HMTA as amended explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" not "otherwise authorized by Federal law" if

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. § 1804(a)(4), concerning "covered subjects"] or section 105(b) [49 U.S.C. § 1804(b), concerning highway routing requirements].

49 App. U.S.C. 1811(a).

The first two paragraphs codify the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to the 1990 amendments to the HMTA. These criteria derive from U.S. Supreme Court preemption decisions. *E.g., Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

The third paragraph, 49 App. U.S.C. 1811(a)(3), in conjunction with 49 App. U.S.C. 1804(a)(4), specifies five "covered subject" areas in which non-Federal requirements are given particular scrutiny:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In these areas, a non-Federal requirement that is "not otherwise authorized by Federal law" is preempted unless it is "substantively the same" as the HMTA or HMR requirement. 49 App. U.S.C. 1811(a). To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

A more limited preemption test, independent of 49 App. U.S.C. 1811(a), applies when the non-Federal requirement is being compared to FMCSR provisions incorporated into the HMR through 49 CFR 177.804. RSPA has declared that in enacting 49 CFR 177.804, it did not intend to change the preemptive effect of those FMCSR provisions incorporated. See IR–22, 52 FR 46574 (Dec. 8, 1987). The preemptive effect of FMCSR training requirements, 49 CFR 390.3(e)(2) and 392.1, is set forth at 49 CFR 390.9:

Except as otherwise specifically indicated, subchapter B of this chapter [49 CFR Parts 350–399] is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

This standard essentially is the "dual compliance" standard. See IR–32, 55 FR 36736, 36741 (Sept. 6, 1990). Any FMSCR provision incorporated into the HMR solely through 49 CFR 177.804 therefore preempts a State or local requirement "only if compliance with both is impossible." IR–32, 55 FR at 36741.

In place of the prior process for issuing advisory inconsistency rulings, the HMTA authorizes any directly affected person to apply to the Secretary of Transportation for a preemption determination with respect to a requirement of a State, political subdivision or Indian tribe. 49 App. U.S.C. 1811(c)(1). Preemption determinations under authority of the HMTA address preemption only by the HMTA, and not by the Commerce Clause of the Constitution or federal statutes other than the HMTA. Other statutes may be relevant to determining HMTA preemption, for instance in establishing whether a non-Federal requirement is "otherwise authorized by Federal law." 49 App. U.S.C. 1804(a)(4)(A).

The Secretary of Transportation has delegated to RSPA the authority to make preemption determinations, except for those concerning highway routing, which are delegated to the Federal Highway Administration. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a). If the HMTA preempts a requirement of a State, a political subdivision of a State or an Indian tribe, that jurisdiction may apply for a waiver of preemption under 49 CFR 107.215 through 107.227. A waiver may be granted if the Associate Administrator finds that the non-Federal requirement affords the public a level of safety equal to or greater than that afforded by the HMR, and that it does not unreasonably burden commerce. Alternatively, the jurisdiction may petition under 49 CFR 106.31 for adoption of a uniform Federal rule.

Preemption determinations under the HMTA are consistent with the principles and policy set forth in Executive Order No. 12,612 ("Federalism"), 52 FR 41685 (Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains an express preemption provision, implemented through RSPA regulations.

III. The CWTI/NTTC Application and Public Comment

A. The CWTI/NTTC Application

The CWTI/NTTC application asserts that the Maryland driver certification requirements duplicate and conflict with Federal standards. It observes that 49 CFR Part 383 of the FMCSR requires a driver to have a CDL with a cargo tank endorsement when operating a cargo tank, and a CDL with a hazardous materials endorsement when

transporting hazardous materials. It notes that the HMR do not impose training certification requirements beyond the employer's duty, set forth at 49 CFR 172.704(d)(5), to maintain training records.

Citing 49 CFR 172.701, CWTI/NTTC object to the requirement that operators not domiciled in Maryland be certified. This regulation authorizes a State to impose training requirements more strict than HMR requirements only on motor vehicle operators domiciled in that State. They refer to the preamble to the final rule enacting 49 CFR 172.700-.704, 57 FR 20944, 20947 (May 15, 1992), which states that 49 CFR 172.701 reflects RSPA's recognition of the "traditional regulation by States of their own resident drivers * * * through drivers' licensing requirements and procedures." CWTI/NTTC appear to argue that RSPA intended to preserve State authority to regulate its own drivers only when that authority is exercised by the State agency traditionally responsible for driver licensing. If section 172.701 is read in this way, CWTI/NTTC imply, it would authorize regulation only by the Maryland Motor Vehicle Administration, the agency that issues the CDL, and not by MDE.

The CWTI/NTTC application maintains that the Maryland requirements violate both the "dual compliance" test and the "obstacle" test under 49 App. U.S.C. 1811(a). The "dual compliance" test, CWTI/NTTC assert, is violated in two respects:

1. A driver cannot comply with both the Maryland requirements and 49 CFR 383.21(a), which prohibits a commercial motor vehicle operator from having more than one driver's license at any time.

2. A non-domiciled driver cannot comply with both the Maryland requirements and 49 CFR 172.701(b), which prohibits the application of State training requirements stricter than those of the HMR to non-domiciled drivers.

According to CWTI/NTTC, the Maryland requirements also are "obstacles" to accomplishing the purposes of the HMR because transporters' burden of complying with paperwork and training requirements of a potentially large number of States, particularly burdens of pre-registering for and attending State-administered tests, would be significant. CWTI/NTTC also suggest that the certification requirements for hazardous waste transporters should be reviewed under 49 CFR 171.3(c), which strictly limits the ability of States to regulate hazardous waste differently than do the HMR.

Finally, CWTI/NTTC assert that the Maryland requirements are not "otherwise authorized by Federal law." See 49 App. U.S.C. 1811(a).

B. Comments Supporting Preemption

RSPA has received comments supporting preemption of one or both operator certification requirements from ten additional parties, including one oil transporter, one hazardous materials transporter, six hazardous waste transporters, an environmental services firm and the Hazardous Materials Advisory Council (HMAC), an association representing the hazardous materials transportation industry.

With respect to Maryland's oil cargo tank operator certification, COMAR 26.10.01.16.D, Amoco Oil Company, Nortru, Inc., Heritage Transport, Inc. and Laidlaw Environmental Services Inc. share the view of CWTI/NTTC that the Maryland requirements duplicate the HMR and the CDL hazardous materials endorsement. Nortru asks how changes in Federal requirements would be incorporated into the substantive requirements of Maryland's certification process. Amoco, Nortru and Heritage Transport emphasize the administrative burden that could result from a determination that Maryland's certification requirements were not preempted. They assert that these burdens, multiplied by the number of States imposing separate requirements, would include paperwork burdens, the difficulty of maintaining a current knowledge of changing State requirements, and lost business opportunities and delays from failing to obtain certifications before entering Maryland. Nortru and HMAC join CWTI/NTTC in citing 49 CFR 172.701(a), which allows a State to impose training requirements more strict than those of the HMR only on drivers domiciled in that State.

Regarding Maryland's hazardous waste vehicle operator certification, COMAR 26.13.04.01.F, commenters' arguments mirror those for the oil cargo tank operator certification. Nortru, Environmental Transport, Inc., McCutcheon Enterprises, Inc., Dart Trucking Company, Inc., Heritage Transport, Laidlaw and Custom Environmental Transport, Inc. charge that the certification duplicates the HMR and the CDL hazardous materials endorsement. Nortru, Environmental Transport and Custom Environmental Transport assert that the certification requirement fails to address how changes in Federal requirements will affect the validity of existing certificates, or how such changes are to be incorporated into revised training programs. Nortru, Environmental Transport, McCutcheon, Heritage Transport, Custom Environmental Transport and Eldredge, Inc. claim administrative burdens similar to those claimed for the oil cargo tank operator certification. Nortru and HMAC, again, point to the 49 CFR 172.701(a) prohibition on imposing requirements stricter than the HMR on non-domiciled drivers. HMAC argues that this conflict results in a violation of the dual compliance test. Eldredge and Dart Trucking, concurring with CWTI/NTTC, assert that the 49 CFR 383.21 prohibition against multiple licenses makes dual compliance impossible.

C. Comments Opposing Preemption

MDE has filed comments opposing preemption of the oil cargo tank operator certification requirement. It takes no position on preemption of the hazardous waste vehicle operator certification requirement.

MDE does not agree that the oil cargo tank operator certification requirement violates the 49 CFR 383.21 prohibition against multiple licenses. It maintains that the driver's certification is directed to ensuring not the safe transport of oil, but its safe transfer, and that the certificate is not a driver's license within the meaning of 49 CFR 383.21 It argues that the Maryland oil cargo tank operator certification program is consistent with the training scheme of 49 CFR 172.700-.704, which sets a performance standard but does not stipulate specific training elements. In particular, it points to 49 CFR 172.702(c), which encourages training by "public sources." In addition, it notes correctly that the CDL hazardous materials endorsement is required only for the transport of placarded shipments, and that not all oil movements require placards. (For example, oil that is a hazardous waste, but that does not meet the criteria for any other hazard class, is a Class 9 hazardous material not required to be placarded. 49 CFR 172.504(f)(9).) Transportation of non-placarded oil therefore does not require a hazmat endorsement and accordingly, MDE concludes, there is no duplication of CDL requirements.

Finally, MDE argues that the oil cargo tank operator certification requirement is "otherwise authorized by Federal law," and thus protected from preemption under 49 App. U.S.C. 1811(a). It finds this authority under sections 102 and 104 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1252(a) and 1254(a)(1). According to MDE, these sections empower States to institute training

requirements directed to preventing and reducing water pollution. MDE also states that EPA approved Maryland's underground storage tank program under the Resource Conservation and Recovery Act (RCRA) Subtitle I, 42 U.S.C. 6991 et seq., in part on the basis of the existence of the certification requirement.

MassDEP asserts that a State's ability to require documentation of driver training is fundamental to effectively regulating hazardous waste transporters. It also refers to ongoing proceedings under 49 App. U.S.C. 1819, under which a working group, formed in part of State representatives, has recommended uniform forms and procedures for State registration and permitting of hazardous materials transporters. The recommendations have been transmitted to the Secretary of Transportation, and may form the basis for Department of Transportation regulations. MassDEP suggests that a determination that the Maryland requirement to document training is preempted would undermine both State regulatory efforts and the working group process. It requests that preemption be considered only to the extent that Maryland requires non-domiciled operators to come into the State for certification.

D. Rebuttal Comments

In rebuttal, CWTI/NTTC reiterate their contention that the Maryland requirements violate both the 49 CFR 172.701(a) prohibition on the application of stricter State training requirements to non-domiciled drivers and the "one driver/one license" rule of 49 CFR 383.21(a). They concur with Nortru, Environmental Transport Group and Custom Environmental Transport that delays inherent in the certification process will cause lost business opportunities.

IV. Discussion

The Maryland regulations under examination concern driver training and certification, and maintenance of training records. None of these is a "covered subject" listed in 49 App. U.S.C. 1804(a)(4)(B). Accordingly, the "substantively the same" preemption standard of 49 App. U.S.C. 1804(a)(4)(A) and 1811(a)(3) does not apply. Rather, the Maryland regulations are preempted if:

(1) compliance with both the State * * * requirement and any requirement of [the HMTA or the HMR] is not possible

[or]

(2) the State * * * requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA or the HMR].

49 App. U.S.C. 1811(a). Both standards, the "dual compliance" and the "obstacle" standard, are employed to determine the preemptive effect of 49 CFR 172.700-.704 and 177.816. In considering the preemptive effect of 49 CFR 390.3(e)(2) and 392.1, however, only the dual compliance test applies. As discussed in section II, above, these provisions, due to their incorporation into the HMR through 49 CFR 177.804, have a narrower preemptive effect than do other HMR provisions.

A. The "Dual Compliance" Test

HMR training requirements for motor vehicle operators appear at 49 CFR 172.700-.704 and 177.816 and, through incorporation, at 49 CFR 390.3(e)(2) and 392.1. Each of these requirements specifies training in aspects of motor vehicle operation when hazardous materials are being transported. Sections 172.702(d), 172.704 and 177.816 require that operators be tested and records of training be maintained. To the extent that the Maryland regulations impose training requirements different from those of the HMR, they are additive. Neither CWTI/NTTC nor any other commenter has suggested that an operator cannot comply with both HMR training requirements and the applicable Maryland certification requirements.

CWTI/NTTC and other commenters do assert, however, that transporters cannot comply with both the Maryland requirements and certain other HMR provisions, namely 49 CFR 172.701 and 383.21(a). The arguments advanced, however, are not persuasive.

Section 172.701 prohibits States from imposing on non-domiciled operators training requirements stricter than those of the HMR. The fact that the regulation is a prohibition on what a State may do means that it cannot create a dual compliance problem for an operator. The dual compliance standard ensures that the regulated community is not put in the position where a non-Federal jurisdiction commands it to do an act that the HMR forbid, or, conversely, where the HMR require an act that the non-Federal jurisdiction forbids. For example, a transporter could not comply with a State requirement to placard a vehicle not carrying hazardous materials without violating 49 App. U.S.C. 1804(e)(2) and 49 CFR 171.2(f)(2), which prohibit representing that a hazardous material is present in a motor vehicle when it is not. See also 49 CFR 171.502(a). Because 49 CFR 172.701 is addressed solely to the State as a regulator, it imposes no duty on an operator, and an operator could not be found in violation of it. As discussed below, 49 CFR 172.701 is relevant to whether the Maryland requirements are an "obstacle" to accomplishing the purposes of the HMTA. It does not, however, present a dual compliance problem.

Section 383.21(a) provides that no operator of a commercial motor vehicle "shall at any time have more than one driver's license." Whether compliance with both this regulation and the Maryland certification requirement is impossible hinges on whether the Maryland operator's certificate is a "driver's license" within the meaning of the regulation. The short answer to the claim, however, is that it is not within the scope of HMTA preemption. Part 383, unlike Parts 390 through 397 of the FMCSR, is not incorporated into the HMR. See 49 CFR 177.804. Accordingly, Part 383 is not a regulation "issued under" the HMTA within the meaning of 49 App. U.S.C. 1811(a)(1), and cannot be the basis for a determination of preemption under the statute.

B. The "Obstacle" Test

While neither operator certification requirement fails the dual compliance test, either requirement nevertheless is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the HMTA. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d at 1580. The "full purposes and objectives" of the HMTA are, foremost, furthering safe hazardous materials transportation and establishing a uniform system of regulation that, by reducing confusion and promoting compliance, contributes to enhanced safety.

As noted in section I.B, above, we consider the oil cargo tank operator certification requirement only as it applies to transportation of oil that is a hazardous material under the HMTA. The HMTA does not preempt Maryland's application of the regulation to the transportation of oil that is not a designated hazardous material. In addition, in determining whether the certification requirements are an "obstacle," we consider them "as enforced and applied." 49 App. U.S.C. 1811(a)(2). Therefore, we consider the hazardous waste vehicle operator certification requirement with respect to the transportation of RCRA-designated hazardous waste only. See section I.B, above.

When a non-Federal requirement differs from the HMR, RSPA must determine whether that difference is an obstacle to the statutory purposes and objectives. The degree to which a

requirement may differ from the HMR before it becomes an obstacle depends on the subject matter of the requirement. With respect to certain areas identified in the HMTA, namely, the "covered subjects" of 49 App. U.S.C. 1804(a)(4)(B), uniformity is paramount and no material deviation is permitted. 49 App. U.S.C. 1811(a). In other areas, RSPA must determine the necessary degree of uniformity in light of existing statutory and regulatory language.

In the area of training, the HMR already have established the extent to which States may regulate differently. Under 49 CFR 172.701, a State may impose training requirements more strict than those of the HMR only if those requirements:

(a) Do not conflict with the training requirements in [49 CFR part 172, Subpart H and part 177]; and

(b) Apply only to drivers domiciled in that State.

The authority granted to States to impose stricter requirements on their domiciled operators "recognizes the traditional regulation by States of their own resident drivers." 57 FR at 20947. It recognizes as well that were States permitted to impose stricter requirements on non-resident operators, operators potentially would be subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens. The Federal regulation "represents an appropriate balancing of the interests of the States and the transportation industry." 57 FR at 20947. Cf. IR–26, 54 FR 16314, 16322 (Apr. 21, 1989)(considering preemption of State training requirements before promulgation of 49 CFR 172.701).

The 49 CFR 172.701 limitation on State regulatory authority over non-domiciled operators pertains only to State "training requirements." The term "training," as defined at 49 CFR 172.700(b), means:

A systematic program that ensures a hazmat employee has familiarity with the general provisions of [the HMR], is able to recognize and identify hazardous materials, has knowledge of specific requirements of [the HMR] applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures.

The two Maryland regulations, see section I.A, above, require that operators of motor vehicles transporting regulated materials, including hazardous materials, pass an examination. The examination is to ensure that the driver is trained in procedures for identifying and marking regulated materials for transportation, safely transporting regulated materials and instituting emergency procedures in the event of a spill. The regulations stipulate the required areas of training, provide for an examination to demonstrate training in those areas, and authorize issuance of a driver's certificate to identify those who satisfactorily have been trained. These are elements of a "systematic program" of "training requirements." Accordingly, the Maryland regulations, as they apply to those transporting hazardous materials, are subject to 49 CFR 172.701.

Both COMAR 26.10.01.16.D, the oil cargo tank operator certification, and COMAR 26.13.04.01.F, the hazardous waste vehicle operator certification, are stricter than the HMR. The HMR impose general and function-specific training requirements on all hazmat employees. Under 49 CFR 177.816, motor vehicle operators in particular are required to be trained in an exhaustive number of areas related to the safe transportation of hazardous materials in motor vehicles. In addition, a hazmat employer must provide for "appropriate" testing of its employees. 49 CFR 172.702(d). Unlike the Maryland regulations, however, the HMR do not condition motor vehicle operation on passing an examination administered by a governmental body. Cf. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d at 1581 (requirement to submit proof of training goes beyond HMR). In addition, COMAR 26.13.04.01.F requires hazardous waste transporters to be trained in specific areas that the HMR do not, namely, in hazardous waste transportation requirements specific to Maryland laws and regulations. The HMR do not limit the means by which a hazmat employer may train a driver, provided that training meets the standard of 49 CFR 172.700(b). Conversely, training received by the operator of a vehicle transporting hazardous waste does not comply with COMAR 26.13.04.01.F unless the instructor meets the experience requirements set forth at COMAR 26.13.04.01.F(5).

MDE suggests that the training requirements are not an obstacle to accomplishing the purposes of the HMTA because of 49 CFR 172.702(c), which states: "Training may be provided by the hazmat employer or other public or private sources." This section, however, simply encourages hazmat employers, in training their employees, to make use of any resources, public or private, that offer training meeting the requirements of the regulations. See 57 FR at 20949–50. It does not authorize States or other non-Federal entities to impose additional training obligations.

Determining the extent to which State training requirements may differ from those in the HMR before they become an obstacle to accomplishing the purposes of the HMTA is a balancing of the State's interest in ensuring the competence of drivers within its jurisdiction against the cost and administrative burdens on transporters and the confusion, reduced compliance and decreased safety that may result from a multiplicity of potentially conflicting requirements. RSPA already has performed that balancing, and the result is codified in 49 CFR 172.701. Because COMAR 26.10.01.16.D and COMAR 26.13.04.01.F are stricter than HMR training requirements, they violate 49 CFR 172.701 to the extent they apply to operators not domiciled in Maryland. Therefore, as applied to non-domiciled operators, each Maryland requirement is an obstacle to accomplishing the full objectives and purposes of the HMTA, and is preempted. As applied to operators domiciled in Maryland, COMAR 26.10.01.16.D and COMAR 26.13.04.01.F are not preempted.

V. "Otherwise Authorized by Federal Law"

The HMTA does not preempt a non-Federal requirement that is "otherwise authorized by Federal law." 49 App. U.S.C. 1811(a). MDE asserts that its oil cargo tank operator certification requirement is authorized by sections 102 and 104 of the FWPCA, 33 U.S.C. 1252(a) and 1254(a)(1), and RCRA Subtitle I, 42 U.S.C. 6991 et seq.

The FWPCA sections cited by MDE do not support its argument. In relevant part, these read as follows:

The [EPA] Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. 33 U.S.C. 1252(a).

The [EPA] Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

33 U.S.C. 1254(a)(1).

By their clear terms, these statutes delegate general authority to the EPA Administrator to develop programs and undertake research to protect surface and groundwater quality. While the Administrator is directed to cooperate with the States in doing so, no regulatory authority is conferred on the States. MDE argues as well that RCRA Subtitle I, regulating underground oil storage tanks, authorizes the oil cargo tank operator certification requirement of COMAR 26.10.01.16.D. Although Subtitle I regulates underground storage tank systems, MDE states, "it is the vehicle operator who transfers the product into and out of these systems." According to MDE, "EPA's approval of the State of Maryland's underground storage tank (UST) program was in part based on its oil vehicle operator's certification requirements for the safe transfer of oil." The elements that a State UST program must contain to qualify for EPA approval are set forth at 42 U.S.C. 6991c(a); these elements are elaborated in EPA regulations at 40 CFR part 281. The elements do not include, and the regulations do not mention, regulation of oil transporters. MDE submits no evidence that Maryland's certification requirement was necessary for EPA approval of the State's UST program.

RCRA Subtitle I, at 42 U.S.C. 6991g, provides:

> Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle.

See also 40 CFR 281.12(a)(3). The fact that Subtitle I does not prohibit a State from imposing more stringent regulations does not protect those regulations from preemption under the HMTA. Indeed, 40 CFR 281.12(a)(3)(ii) states:

> Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

See also PD–1, 57 FR 58848, 58855 (Dec. 11, 1992) (ruling similarly on nearly identical language in RCRA Subtitle C, 42 U.S.C. 6929).

In summary, the Maryland oil cargo tank operator certification requirement is not "otherwise authorized by Federal law" within the meaning of 49 App. U.S.C. 1811(a).

VI. Ruling

For the reasons set forth above, RSPA finds that 49 App. U.S.C. 1811(a)(2) preempts Maryland regulations COMAR 26.10.01.16.D and COMAR 26.13.04.01.F, requiring certification of operators of motor vehicles loading or unloading hazardous materials in Maryland, as they apply to vehicle operators not domiciled in Maryland. Specifically, these requirements are stricter than Federal operator training requirements and therefore are obstacles to accomplishing the full purposes and objectives of the HMTA. As applied to vehicle operators domiciled in Maryland, the requirements are not preempted.

VII. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by RSPA's decision on the NTTC/CWTI application may file a petition for reconsideration within 20 days of service of the decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will constitute final agency action. 49 CFR 107.211(d).

Issued in Washington, DC on May 24, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–13326 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–60–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:49 a.m. on Tuesday, May 31, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to an assistance agreement with an insured bank.

Matters relating to Corporation's corporate and supervisory activities.

Recommendation concerning an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: May 31, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–13656 Filed 6–1–94; 12:35 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, June 8, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13638 Filed 6–1–94; 12:34 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart C—Board Determinations

Correction

In rule document 94-12955 beginning on page 27462 in the issue of Friday, May 27, 1994, make the following correction:

§ ___.24 [Corrected]

On page 27463, in the third column, in the amendment to § ___.24(a)(2), the entry for the table at the bottom of the page should have read as set forth below.

Area	Species	Determination
* * * * *		
Kuskokwim area	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, Akiachak, and Platinum.

* * * * *

BILLING CODE 1505-01-D

federal register

Friday
June 3, 1994

Part II

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1726

Electric System Construction Policies and Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1726

RIN 0572–AA47

Electric System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulation on Electric System Construction Policies and Procedures. This action will contain the policies and the procedures applicable to REA electric borrowers when purchasing materials and equipment, and when constructing system facilities by contract or force account. These policies and procedures are currently contained in seven REA bulletins. The changes that are being proposed pertain to REA approval of contracts, subcontracts and amendments to contracts; documentation of contracting activity by REA borrowers; procurement procedures to be used by REA borrowers; and closeout procedures for construction contracts.

DATES: Written comments must be received by REA, or bear a postmark or equivalent, no later than August 2, 1994.

ADDRESSES: Submit written comments to Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, room 1246–S, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requires a signed original and 3 copies of all comments (§ 1700.30(e)). Comments will be made available for public inspection at room 2234 South Building between 8:30 a.m. and 5 p.m. on official work days (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 720–1398.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of the Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

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

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone (202) 720–3238.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees from coverage under this order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any State or local laws, regulations or policies; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Background

Pursuant to the Rural Electrification Act of 1936, as amended (the RE Act) (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII, by revising part 1726, Electric System Construction Policies and Procedures. This revised part will contain the policies and the procedures applicable to REA borrowers and contractors when purchasing materials and equipment and constructing electric system facilities by contract or force account (the REA borrower's own construction crews).

These policies and the procedures implement certain provisions of the REA standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by REA are adequately secured, REA, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standard forms and procurement procedures helps assure REA that: (1) appropriate standards and specifications are maintained; (2) REA's loan security is not adversely affected; and (3) loan and loan guarantee funds are used effectively and for the intended purposes.

The current policies and procedures that will be affected are set forth in REA Bulletin 40–6, Construction Methods and Purchase of Materials and Equipment; REA Bulletin 40–8, Construction Specifications, Drawings and Contract Forms for Distribution, Transmission and Generation Facilities; REA Bulletin 81–6, Closeout Procedures and Documents for Contract Construction of Distribution and Transmission Facilities; REA Bulletin 85–1, Closeout Procedures and Documents for the Contract Construction of Generating Facilities and Associated Buildings; REA Bulletin 86–1, Closeout Procedures and Documents for the Construction of Buildings Other than Generating Plants; and REA Bulletin 86–3, Headquarters Facilities for Electric Borrowers. The current policies and procedures will be changed and updated by this proposal.

The major substantive proposed changes are as follows:

(a) This proposal applies to procurement and construction for all projects which will or may be financed, in whole or in part, with loans made or guaranteed by REA. REA Bulletin 40–6 currently contains the requirements for all procurement and construction, regardless of the source of funds.

(b) This proposal would eliminate the current requirement that REA approve subcontracts. (Subcontracts for generating projects are already exempt from REA approval.)

(c) This proposal would change the dollar thresholds that determine which procurement procedure is to be used for a project.

(d) This proposal would raise the dollar thresholds that determine whether REA approval of a contract is required and eliminate the requirement of REA approval of certain contract amendments.

(e) This proposal would eliminate the requirement of REA approval of borrowers' contracts for headquarters facilities.

(f) This proposal would add procedures for procurement of communication and control facilities.

(g) This proposal would simplify the procedures for the closeout of construction contracts by reducing the number of forms to be submitted to REA.

(h) This proposal would revise the REA standard contract forms. The major changes in the contract forms would be as follows:

(1) Change the forms to reflect the changes listed above.

(2) Change the insurance and bonding dollar limits as outlined in 7 CFR part 1788.

(3) Change the forms to require prequalification of all bidders.

(4) Change the interest rate on overdue accounts.

(5) Change the "Buy American" provision to include Mexico and Canada in accordance with the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law 103–182.

(6) Change the indemnification clause (also called "hold harmless clause") to reflect REA's current policy.

(7) Incorporate certain technical changes relating to wood treating and right-of-way clearing chemicals.

In order to reduce printing cost and volume, the forms to be included in this part are condensed, especially the tables. Also, several forms refer to guide drawings, which do not contain requirements, and, hence, will not be included. It is intended that once the forms are finalized, REA will reformat these forms similar to their current configuration (including the tables and drawings) and make them available in that format either from REA or for purchase from the Government Printing Office. See proposed § 1726.300 for a list of the standard forms of electric contracts and where each may be obtained.

List of Subjects in 7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, REA proposes to amend 7 CFR chapter XVII by revising part 1726 to read as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subpart A—General

Sec.

1726.1–1726.9 [Reserved]
1726.10 Introduction.
1726.11 Purpose.
1726.12 Applicability.
1726.13 Waivers.
1726.14 Definitions.
1726.15 "Buy American".
1726.16 Debarment and suspension
1726.17 Restrictions on lobbying.
1726.18 Preloan contracting.
1726.19 Use of competitive procurement.
1726.20 Standards and specifications.
1726.21 New materials.
1726.22 Methods of construction
1726.23 Qualification of bidders
1726.24 Written contracts.
1726.25 Subcontracts.
1726.26 Payment to contractor for material delivered.
1726.27–1726.34 [Reserved]
1726.35 Submission of documents to REA
1726.36 Documents subject to REA approval.
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Subpart B—Distribution Facilities

1726.50 Distribution line materials and equipment.
1726.51 Distribution line construction
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Subpart C—Substation and Transmission Facilities

1726.75 General.
1726.76 Substation and transmission line materials and equipment.
1726.77 Substation and transmission line construction.
1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

1726.125 Generating plant facilities
1726.126–1726.149 [Reserved]

Subpart E—Buildings

1726.150 Headquarters buildings.
1726.151–1726.174 [Reserved]

Subpart F—General Plant

1726.175 General plant materials.
1726.176 Communications and control facilities.
1726.176–1726.199 [Reserved]

Subpart G—Procurement Procedures

1726.200 General requirements.
1726.201 Formal competitive bidding.
1726.202 Informal competitive bidding.
1726.203 Multiparty negotiation.
1726.204 Multiparty unit price quotations.
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1726.206–1726.249 [Reserved]

Subpart H—Modifications to REA Standard Contract Forms

1726.250 General.
1726.251 Prior approved contract modification related to price escalation on generation contracts.
1726.252 Prior approved contract modification related to liability for special and consequential damages.
1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.
1726.254 Prior approved contract modifications related to REA approval of contracts and amendments.
1726.255–1726.299 [Reserved]

Subpart I—REA Standard Forms

1726.300 List of REA standard contracting forms for electric systems.
1726.301 Use of printed forms.
1726.302 REA approved forms of contract.
1726.303 Interest on overdue accounts.
1726.304–1726.309 [Reserved]
1726.310 Contractor's bond, REA Form 168b.
1726.311 Contractor's bond, REA Form 168c.
1726.312 Construction contract amendment, REA Form 180.
1726.313 Certificate of completion, contract construction for buildings, REA Form 181.
1726.314 Certificate of completion, contract construction, REA Form 187.
1726.315 Equipment contract, REA Form 198.
1726.316–1726.319 [Reserved]
1726.320 Construction contract, generating, REA Form 200.
1726.321 Right-of-way clearing contract, REA Form 201.
1726.322 Transmission system right-of-way clearing contract, REA Form 203.
1726.323 Certificate (Buy America), REA Form 213.
1726.324 Waiver and release of lien, REA Form 224.
1726.325 Certificate of contractor, REA Form 231.
1726.326 Construction or equipment contract amendment, REA Form 238.
1726.327 Material receipt, REA Form 251.
1726.328 Construction inventory (for labor and material contract), REA Form 254.
1726.329 Contract to construction buildings, REA Form 257.
1726.330 [Reserved]
1726.331 Bid bond, REA Form 307.
1726.332–1726.339 [Reserved]
1726.340 Substation and switching station erection contract, REA Form 764.
1726.341 Electric system communications and control equipment contract, REA Form 786.
1726.342 Distribution line extension construction contract (labor and materials), REA Form 790.
1726.343 Distribution line extension construction contract (labor only), REA Form 792.
1726.344 [Reserved]

1726.345 Certificate of constructor and indemnity agreement (line extensions), REA Form 792b.
1726.346 Supplemental contract for additional project, REA Form 792c.
1726.347–1726.349 [Reserved]
1726.350 Construction contract amendment for payment, REA Form 800.
1726.351 Electric system construction contract (labor and materials), REA Form 830.
1726.352 Electric transmission construction contract (labor and materials), REA Form 831.
1726.353–1726.399 [Reserved]

Subpart J—Contract Closeout

1726.400 Final contract amendment.
1726.401 Material contract closeout.
1726.402 Equipment contract closeout.
1726.403 Project construction contract closeout.
1726.404 Non-project construction contract closeout.
1726.405 Inventory of work orders (REA Form 219).

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

Subpart A—General

§§ 1726.1–1726.9 [Reserved]

§ 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Electrification Administration (REA) and its electric borrowers. Unless prior written approval is received from REA, borrowers are required to comply with REA's policies and procedures as a condition to REA providing financial assistance for the construction and improvement of electric facilities. Requirements for REA approval of plans and specifications are contained in part 1724 of this chapter.

§ 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. REA, as a secured lender, has a legitimate interest in accomplishing REA's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

§ 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction will or may be financed, in whole or in part, with loans made or guaranteed by REA. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, in addition to other requirements of this chapter, the borrower must demonstrate to the satisfaction of REA that the procedures required by this part were followed.

§ 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. REA reserves the right, as a condition of providing financial assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator. The Administrator may, on a case by case basis, waive certain requirements of this part for major storm damage repair work.

§ 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific REA forms and other REA documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

Approval of proposed construction means REA approval of a construction work plan or other appropriate engineering study and REA approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Bona fide bid means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

"Buy American" certificate means a certification that the contractor has complied with the "Buy American" requirement (see § 1726.15).

Competitive procurement means procurement of goods or services based on the lowest evaluated bid for similar products or services when three or more bids are received.

Construction unit means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

Contracting committee means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarification discussions or negotiations.

Engineer means a registered or licensed person employed by the borrower to provide engineering services for a project and duly authorized assistants and representatives.

Equipment means a major component of an electric system, *e.g.*, a substation transformer, heat exchanger or a transmission structure.

Financial assistance means loans or grants made or guaranteed by REA, or lien accommodations or lien subordinations granted and approved by REA.

Force account construction means construction performed by the borrower's employees.

Formal competitive bidding means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

Goods or services means materials, equipment, or construction, or any combination thereof.

Informal competitive bidding means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

Material means miscellaneous hardware which is combined with equipment to form an electric system, *e.g.*, poles, insulators, or conductors.

Minor error or irregularity means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction.

Minor modification or improvement means a project where the construction

contract is less than $50,000, exclusive of the cost of owner furnished materials.

Multiparty lump sum quotations means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received (see § 1726.205).

Multiparty negotiation means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

Multiparty unit price quotations means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (see § 1726.204).

Net Utility Plant (NUP) means part C, Line 5 of REA Form 7 for distribution borrowers or section B, Line 5 of REA Form 12a for power supply borrowers.

Owner furnished materials means materials or equipment or both supplied by the borrower for installation by the contractor.

REA approval means written approval by the Administrator or a representative with delegated authority. REA approval must be in writing, except in emergency situations where REA approval may be given over the telephone followed by a confirming letter.

Responsive bid means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

Unit prices means individual prices for specific construction units defined in accordance with REA approved units specified in REA standard contract forms.

§ 1726.15 "Buy American".

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by REA complies with the "Buy American" provisions of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*). When a "Buy American" certificate is required by this part, this must be on REA Form 213.

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, *e.g.*, procurement contracts for goods or services.

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1726.18 Preloan contracting.

Borrowers must consult with REA prior to entering into any contract for material, equipment or construction if a construction work plan, loan or loan guarantee for the proposed work has not been approved. While the REA staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

§ 1726.19 Use of competitive procurement.

REA borrowers' procurement is not subject to the provisions of the Federal Aquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance, borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a REA loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials and equipment must meet the minimum requirements of all applicable REA standards and specifications. (See part 1728, Electric Standards and Specifications for Materials and Construction, of this chapter.)

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless otherwise approved by REA, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. REA reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall, with the advice of its engineer, review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select those firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Written contracts.

(a) *General.* Procurement of goods or services must be by written contract or purchase orders. The borrower shall use an REA Approved Form of Contract for such contracts where required by subparts B through F of this part.

(b) *Amendments to contracts.*—(1) *Contract forms.* The borrower must use REA Form 180, Construction Contract Amendment, for any change or addition in a distribution line construction contract. The borrower must use REA Form 238, Construction or Equipment Contract Amendment, for any change or addition in any other contract for construction, or for materials or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements

associated with the proposed construction have been met.

(3) *Amendment approval requirements.* The borrower must make a contract amendment subject to REA approval if either of the following exist:

(i) The amendment alters the terms and conditions of the REA Approved Form of Contract; or

(ii) The underlying contract was made subject to REA approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(4) If neither of the above two conditions exist, the contract amendment is not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.25 Subcontracts.

The contractor or supplier may use REA Form 282, Subcontract, for subcontracts on construction, material or equipment contracts. Subcontracts are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.26 Payment to contractor for material delivered.

When construction is performed under a labor and materials contract, the contractor is responsible for ensuring that sufficient equipment and materials are on hand at the construction site to allow construction to continue to completion in an orderly and expeditious manner. However, under certain circumstances beyond the control of the contractor, it may be necessary to halt construction for an extended period.

(a) *Conditions.* When for reasons which are beyond the control and not the fault of the contractor it becomes necessary to suspend construction for such an extended period (usually over 30 days), the owner may, at the request of the contractor, consider an amendment to a construction contract providing for the payment to the contractor of 90 percent of the invoice cost to the contractor of the equipment or materials delivered to the project site but not installed, provided the contractor warrants that such materials or equipment are:

(1) Actually on the site of the project and will remain there until installed in the project.

(2) In conformance with the contract specifications and not in excess of the quantity required for the project.

(3) Properly stored and protected from weather, theft, and hazards.

(4) Capable of being easily inventoried as to the original quantity and each month as to the remaining quantity.

(b) *Form of request.* Requests by contractors for this type of amendment to construction contracts must be submitted by the contractor to the borrower on REA Form 800, Construction Contract Amendment for Payment. The requests must be prepared in triplicate, and each copy signed by an authorized agent of the surety.

(c) *Approval of request.* If the borrower agrees to the request, the borrower will sign all three copies in the space provided, and, if the underlying contract was made subject to REA approval, the borrower will forward all copies to REA for approval.

(d) *Payments.* Payments made under this section are to be made within thirty days after the final approval of the REA Form 800, Construction Contract Amendment for Payment, provided that the contractor has submitted the proper releases of liens from the supplier covering such equipment and materials. After construction has resumed, as the contractor is paid for monthly estimates of assembly units installed, a deduction must be made equal to the invoice cost of equipment and materials included in such estimates of assembly units installed and for which payment has been made to the contractor pursuant to the REA Form 800.

§§ 1726.27–1726.34 [Reserved]

§ 1726.35 Submission of documents to REA.

(a) *Where to send documents.* Documents required to be submitted to REA under this part are to be sent to the office of the borrower's respective REA Regional Director, the Power Supply Division Director, or such other office of REA as designated by REA (see part 1700 of this chapter.)

(b) *Borrower certification.* When a borrower certification is required by this part, it must made be by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with REA.

(c) *Contracts requiring REA approval.* The borrower shall submit to REA three copies of each contract that is subject to REA approval under subparts B through F of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation and certification of the contracting committee (See §§ 1726.202 and 1726.203).

(3) Three copies of an executed contractor's bond on REA approved bond forms as required in the contract form (at least one copy of which must be an original signed in ink), proof of insurance coverage where required in the contract form, and one copy of the bid bond or facsimile of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) A certified copy of the board resolution awarding the contract.

(6) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(d) *Contract amendments requiring REA approval.* The borrower must submit to REA three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to REA approval under § 1726.24(b). Each contract amendment submittal to REA must be accompanied by:

(1) A certified copy of the board resolution approving the amendment; and

(2) A bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to REA approval, the submittals required under § 1726.35(c) will initiate REA action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to REA approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using REA Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, providing it meets all applicable REA requirements.

(3) For generation project contracts not subject to REA approval, the borrower must submit to REA the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;
(iii) Contractor's name;
(iv) Contract amount;
(v) Bidding procedure used;
(vi) Borrower certification that:
(A) The board of directors approved the contract;
(B) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;
(C) The terms and conditions of the REA approved form of contract have not been altered;
(D) If REA has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and
(E) No restriction has been placed on the borrower's right to assign the contract to REA or its successors.
(4) *Contract amendments.* (i) For amendments subject to REA approval, the submittals required under § 1726.35(c) will initiate REA action to encumber loan or loan guarantee funds for contract amendments requiring REA approval.
(ii) For amendments not subject to REA approval (except generation projects), loan or loan guarantee funds will normally be encumbered using REA Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable REA requirements.
(iii) For each generation project contract amendment not subject to REA approval, the borrower must submit to REA the following information and documentation:
(A) The contract name and number;
(B) The amendment number;
(C) The amendment date;
(D) The dollar amount of the increase or the decrease of the amendment;
(E) Borrower certification that:
(1) The amendment was approved in accordance with the policy of the board of directors (the borrower must ensure that REA has a certified copy of the board resolution establishing such policy);
(2) The terms and conditions of the REA approved form of contract has not been altered;
(3) No restriction has been placed on the borrower's right to assign the contract to REA or its successors.

§ 1726.36 Documents subject to REA approval.

Unless otherwise indicated, the borrower shall make all contracts and amendments that are subject to REA approval effective only upon REA approval.

§§ 1726.37–1726.49 [Reserved]

Subpart B—Distribution Facilities

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use REA Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is in excess of $500,000.
(2) The borrower may, in its discretion, use REA Form 173, Materials Contract, REA Form 198, Equipment Contract, or a purchase order for purchases of equipment of less than $500,000 and for all materials.
(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of REA standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain REA approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.
(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction.
(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use REA Form 201, 790, 792, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.
(1) The borrower may use REA Form 790, Distribution Line Extension Construction Contract (Labor and Materials), or REA Form 792, Distribution Line Extension Construction Contract (Labor only) under the following circumstances:
(i) For contracts for which the borrower supplies all materials and equipment; or
(ii) For non-site specific construction contracts accounted for under the work order procedure; or
(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use REA Form 790 or 792 for contracts, up to a cumulative total of $250,000 or one percent of Net Utility Plant, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.
(2) The borrower must use REA Form 830, Electric System Construction Contract (Labor and Materials), for all other distribution line construction. Where distribution lines are being constructed incidental to transmission line construction, the borrower must use REA Form 831, Electric Transmission Construction Contract.
(3) The borrower must use REA Form 201, Right-of-Way Clearing Contract, for new distribution line construction right-of-way clearing when done separately from work performed under REA Form 830.
(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts for up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment. In addition, a borrower may use Multiparty Unit Price Quotations to award contracts for up to a cumulative total of $350,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment. The borrower shall use formal competitive bidding for all other distribution line contract construction.
(c) *Contract approval.* Contracts for distribution line construction are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§§ 1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

§ 1726.75 General.

As used in this part, "substations" includes substations, switching stations, metering points, and similar facilities.

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower must use REA Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is in excess of $500,000.
(2) The borrower may, in its discretion, use REA Form 173, Materials Contract, REA Form 198, Equipment Contract, or a purchase order for

purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of REA standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain REA approval prior to the purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* (1) The borrower must use REA Form 764, Substation Erection Contract, for construction of substations, except for minor modifications or improvements. The borrower must use REA Form 831, Electric Transmission Construction Contract for projects where substations are incidental to transmission line construction and are to be constructed under the same contract.

(2) The borrower must use REA Form 831, Electric Transmission Construction Contract, for construction of transmission lines (except for minor modifications or improvements).

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring REA approval for up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of substation and transmission line construction, exclusive of the cost of owner furnished materials and equipment. The borrower shall use formal competitive bidding for all other contract construction, including all contracts requiring REA approval.

(c) *Contract approval.* Individual contracts in excess of $250,000 or one percent of NUP (not to exceed $500,000), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to REA approval.

§§ 1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

§ 1726.125 Generating plant facilities.

This section covers the construction of all portions of a generating plant, including plant buildings and the generator step-up transformer. Generally, the transmission switchyard will be covered under this section during initial construction of the plant. Subpart C of this part covers subsequent modifications to transmission switchyards. Office buildings, warehouses, and equipment service type buildings are covered under subpart E of this part.

(a) *Contract forms.* (1) The borrower must use REA Form 198, Equipment Contract, for the purchase of generating plant equipment in excess of $1,500,000 and for any generating plant equipment contract requiring REA approval.

(2) The borrower must use REA Form 200, Construction Contract—Generating, for construction of generating projects estimated to cost in excess of $1,500,000 and for any generating project construction contract requiring REA approval.

(3) The borrower may, in its discretion, use other contract or purchase order forms for those contracts estimated to cost less than $1,500,000 and do not require REA approval.

(b) *Plans and specifications.* The borrower shall obtain REA approval of the plans and specifications for generating plant equipment prior to issuing invitations to bid for a contract subject to REA approval as determined under this subpart, and for any contract for generating plant equipment or construction which the project engineer estimates will cost in excess of $1,500,000 or requires REA approval. Plans and specifications for other equipment and construction contracts do not require REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

(c) *Procurement procedures.* If the estimated cost of the contract exceeds $1,500,000 or if the contract requires REA approval, the borrower must use formal or informal competitive bidding to award the contract. Where formal or informal competitive bidding is not applicable, or does not result in a responsive bid, multiparty negotiation may be used only after REA approval is obtained.

(d) *Contract approval.* During the early stages of generating plant design or project design, REA will, in consultation with the borrower and its consulting engineer, identify the specific contracts which require REA approval based on information supplied in the plant design manual. The following are typical contracts for each type of generating project which will require REA approval. Although engineering services are not covered by this part, they are listed in this paragraph (d) to emphasize that REA approval is required for all generating station engineering service contracts. For types of projects not shown, such as nuclear and alternate energy projects, REA will identify the specific contracts which will require REA approval on a case by case basis.

(1) *Fossil generating stations.* Engineering services, steam generator, turbine generator, flue gas desulfurization system, particulate removal system, electric wiring and control systems, mechanical equipment installation (including turbine installation and plant piping), power plant building (foundation and superstructure), site preparation, coal unloading and handling facilities, main step-up substation, cooling towers, and dams or reservoirs.

(2) *Diesel and combustion turbine plants.* Engineering services, prime mover and generator, building (foundation and superstructure), and electrical control systems.

(3) *Hydro installations.* Engineering services, turbine/generator, civil works and powerhouse construction, electrical control system, and mechanical installation.

§§ 1726.126–1726.149 [Reserved]

Subpart E—Buildings

§ 1726.150 Headquarters buildings.

This section includes office buildings, warehouses, and equipment service type buildings. Generating plant buildings are covered under subpart D of this part.

(a) *Contract forms.* The borrower must use REA Form 257, Contract to Construct Buildings, for all contracts for construction of new headquarters facilities, and additions to, or modifications of existing headquarters facilities (except for minor modifications or improvements). Nonstandard forms or REA Form 257 with substantial alterations must be submitted to REA for approval of the form prior to issuing invitations to bids on that form.

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts for up to a cumulative total of $250,000 or one percent of NUP (not to exceed

$1,000,000), whichever is greater, per calendar year of headquarters construction. The borrower must use formal competitive bidding for all other headquarters contract construction.

(c) *Contract approval.* Contracts for headquarters construction are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§§ 1726.151–1726.174 [Reserved]

Subpart F—General Plant

§ 1726.175 General plant materials.

This section covers items such as office furniture and equipment; transportation equipment and accessories, including mobile radio systems, stores and shop equipment, laboratory equipment, tools and test equipment.

(a) *Contract forms.* The borrower may, in its discretion, use REA Form 173, Material Contract, REA Form 198, Equipment Contract, or a purchase order.

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of general plant material and equipment.

(c) *Contract approval.* Contracts for the purchase of general plant items are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.176 Communications and control facilities.

This section covers the purchase of microwave and power line carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems. Mobile radio systems are covered as general plant materials in § 1726.175.

(a) *Power line carrier systems.* Power line carrier equipment will frequently be purchased as part of a substation and will be included in the complete substation plans and specifications.

When purchased in this manner, the requirements of subpart C of this part, Substation and Transmission Facilities, will apply. If obtained under a contract for only a power line carrier system, the requirements of paragraph (b) of this section apply.

(b) *Load control systems, communications systems, and SCADA systems.*—(1) *Contract forms.* The borrower must use REA Form 786, Electric System Communication and Control Equipment Contract.

(2) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring REA approval for up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of communications and control facilities construction, exclusive of the cost of owner furnished materials and equipment. The borrower must use multiparty negotiation for all other communications and control facilities contract construction, including all contracts requiring REA approval.

(3) *Contract approval.* Individual contracts in excess of $250,000 or one percent of NUP (not to exceed $500,000), whichever is greater, are subject to REA approval.

§§ 1726.176–1726.199 [Reserved]

Subpart G—Procurement Procedures

§ 1726.200 General requirements.

The borrower must use the procedures described in this subpart where such procedures are required under subparts B through F of this part. The borrower must ensure that arrangements prior to announcement of the award of the contract are such that all bidders are treated fairly and no bidder is given an unfair advantage over other bidders.

§ 1726.201 Formal competitive bidding.

The borrower must use the following procedure for Formal Competitive Bidding:

(a) *Selection of qualified bidders.* The borrower, on advice of the engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its QBL for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through its engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and taking any other action necessary to procure full, free and competitive bidding. The borrower should send out a sufficient number of invitations in order to assure adequate competition and so that at least three bids will be received. Subject to the foregoing criteria, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(d) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(e) *Bid openings.* Bid openings are generally conducted by the engineer in the presence of bidders and a representative of the borrower and the borrower's attorney. Each bona fide bid must be opened publicly and reviewed for any irregularities, errors, or exceptions. It must be verified that any addendum or supplement to the specification has been acknowledged by the bidder. The adequacy of bid bonds or certified checks must be verified at this time.

(f) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(3) *Minor errors or omissions in the specification.* If minor errors or omissions in the specification are found, the borrower must issue an addendum to each prospective bidder correcting the error or omission prior to opening any bids. After bid opening, the error or omission must be corrected following the award of the contract.

(4) *Minor errors or irregularities in bid.* The borrower may waive minor errors or irregularities in any bid, if the borrower determines that such minor errors or irregularities were made

through inadvertence. Any such minor errors or irregularities so waived must be corrected on the bid in which they occur prior to the acceptance thereof by the borrower.

(5) *Non-minor error or irregularity in bid.* If a bid contains a non-minor error or irregularity, the bid must be rejected and the bid price must not be disclosed.

(6) *Unbalanced bid.* If a bid contains disproportionate prices between labor and materials or between various construction units, the borrower may reject the bid.

(7) *No acceptable price quoted.* If none of the bidders quote an acceptable price, the borrower may reject all bids.

(g) *Evaluating bids.* The borrower, acting through the engineer, must conduct the evaluation of bids on the basis of the criteria set out in the "Notice and Instructions to Bidders." The contract, if awarded, must be awarded to the bidder with the lowest evaluated responsive bid.

(h) *Announcement of bids.* If possible, the borrower will announce bids at the bid opening. However, where extensive evaluation is required, the borrower may elect to adjourn and make formal written announcement to all bidders at a later time. Any discrepancy in a rejected bid must be indicated in the bid announcement.

(i) *Award of contract.* Upon completion of the bid evaluations and based upon the findings and recommendations of the borrower's management and engineer, the borrower's board of directors will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certification by the borrower and its engineer.* The borrower shall certify and the engineer shall certify as follows: "The procedures for formal competitive bidding, as described in 7 CFR 1726.201, were followed in awarding this contract." The certification executed by and on behalf of the borrower and its engineer shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.202 Informal competitive bidding.

Informal competitive bidding is limited to major equipment purchases and generation facilities. The borrower must use the following procedure for informal competitive bidding:

(a) *Selection of qualified bidders.* The borrower, on advice of its engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through the engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure adequate competition and that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Clarification of proposals.* The contracting committee may elect not to hold any clarifying discussions and recommend awarding the contract to the low responsive bidder. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to attend discussions for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Upon completion of the clarifying discussions, the contracting committee will determine the lowest evaluated responsive bid. If no bids are responsive after the contracting committee has completed clarifying discussions, no contract award can be made under the informal bidding procedure.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.202 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.203 Multiparty negotiation.

Multiparty negotiation may only be used where permitted under subpart F of this part or where prior REA approval has been obtained. The borrower must use the following procedure for multiparty negotiation:

(a) *Selection of qualified bidders.* The borrower, on advice of its engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through the engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure adequate competition and so that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Negotiations.* The contracting committee may elect not to hold any negotiations and recommend award of the contract. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to attend negotiations for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Upon completion of the negotiations, the contracting committee will determine the bid that is in the borrower's best interest.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.203 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.204 Multiparty unit price quotations.

The borrower or its engineer must contact at least three suppliers or contractors and, on the basis of written unit price quotations, select the supplier or contractor based on the lowest evaluated cost.

§ 1726.205 Multiparty lump sum quotations.

The borrower or its engineer must contact at least three suppliers or contractors and, on the basis of written lump sum quotations, select the supplier or contractor based on the lowest evaluated cost.

§§ 1726.206–1726.249 [Reserved]

Subpart H—Modifications to REA Standard Contract Forms

§ 1726.250 General.

REA provides standard contract forms for procurement of materials, equipment, and construction, for contract amendments and subcontracts, and various related forms for use by REA borrowers. See § 1726.300 for a listing of these forms and how to obtain them. The standard contract forms shall be used by the borrowers in accordance with the provisions of this part. REA will give prior approval to certain modifications to these forms without changing the applicable requirements for REA approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior REA approval.

§ 1726.251 Prior approved contract modification related to price escalation on generation contracts.

(a) *General.* Where the borrower encounters reluctance among manufacturers, suppliers, and contractors to bid a firm price on equipment, materials or construction of generation facilities, modifications may be made in the REA standard form of contracts. These modifications if applicable, may include, as an alternative to the standard form, provisions for adjusting a base price either upward or downward as determined by changes in specified indexes between the time of the bid and the time the work is performed or materials are procured by the contractor for such work. A large number of labor and materials indexes are published monthly by the Bureau of Labor

Statistics (BLS). The borrower, on the advice of its engineer, will select the indexes for the particular item to be used in the price adjustment clause. Suppliers' corporate indexes may not be used. Labor and materials indexes are reported in the BLS's monthly publications entitled "Employment and Earnings" and "Producer Prices and Price Indexes." These publications may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, telephone (202) 720–3238, or any of the BLS regional offices.

(b) *Material and equipment contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the material or equipment contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the Notice and Instructions to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm prices. The prices are subject to adjustment upward or downward based on change in the Bureau of Labor Statistics labor and material indexes.

A proportion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent labor cost and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate—_____ [the borrower will enter the appropriate BLS index] from the month in which the bids are opened to the month in which the labor is incorporated in the equipment or materials. The adjustment for labor costs shall be obtained by applying the percentage of increase or decrease in such index, calculated to the nearest one-tenth of one percent, to the percentage of the contract prices deemed to represent labor costs. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, material index _____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the labor cost adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____"

(3) For generating plant equipment that uses a large quantity of insulating oil, the borrower may insert the following in the contract documents under the "Proposal" section:

"The price for insulating oil shall be adjusted upward or downward based on the change in the Bureau of Labor Statistics Refined Petroleum Rate (057) from the month in which the bids are opened to the month in which the oil is purchased by the equipment supplier. Contracts shall be evaluated based on an estimated cost of _____ cents per gallon [the borrower will enter the appropriate cost] for oil. Such adjustment, if any, shall not change the contract amount for purpose of applying any other adjustments to the contract prices."

(c) *Construction contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the construction contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the "Notice and Instructions" to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis."

Nonfirm Prices—The prices are subject to adjustment upward or downward based on changes in the Bureau of Labor Statistics labor and material indexes.

A proportion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent shop labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate _____ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for shop labor costs shall be obtained by applying the percentage increase or decrease in such index, to the percentage of each partial payment deemed to represent shop labor costs. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract prices shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Producer Price Index, _____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the shop labor costs adjustment. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent field labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate _____ [the borrower will enter the appropriate BLS index], for the period and in a manner similar to the shop labor costs adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____ "

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

This section applies only to major equipment purchases and generation contracts. Where the borrower anticipates difficulty in obtaining responsive bids on REA standard contract forms due to a lack of limitation with respect to special and consequential damages, and where the borrower believes that such a modification will encourage competition through the receipt of an alternative bid which limits the bidder's liability for special and consequential damages, the borrower may make the following approved phrase modifications in the REA standard contract form on which the borrower solicits bids:

(a) Insert new paragraphs in the "Notice and Instructions to Bidders" as follows:

"Proposals are invited on the basis of alternative Liability Clauses Numbers 1 and 2. The owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the owner and attached hereto:

Except for the seller's willful delay or refusal to perform the contract in accordance with its terms, the seller's liability for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to _____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.'"

(b) Insert the following in the contract documents under the "Proposal" section:

"Price $ (Based on Liability Clause 1)
_____
Price $(Based on Liability Clause 2)
_____"

(c) Insert the following in the acceptance section of the standard contract form:

"This contract is based on Liability Clause Number _____."

§ 1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.

When construction is to be performed over an extended period of time, but large quantities of material are to be purchased by the contractor at the beginning of the project (*e.g.*, cable for URD installations), the borrower may allow alternative bids providing for

payment to the contractor of 90 percent of the cost of such materials within 30 days of delivery of those materials at the job site. The borrower will retain the right to award the contract with or without the alternative payment provision , however, but the contract still must be awarded on the basis of the lowest evaluated responsive bid for the alternative accepted. REA Form 800, Construction Contract Amendment for Payment, must be used by the contractor to obtain payment from the borrower if this alternative is accepted, and the conditions of § 1726.27 (a)(1) through (a)(4) and the payment terms of § 1726.27(d) will also apply to this section.

§ 1726.254 Prior approved contract modifications related to REA approval of contracts and amendments.

It will be necessary for borrowers to make certain modifications to various REA contract forms to implement the provisions of this part. These modifications indicate that certain provisions related to REA approval are not applicable under specified circumstances. The modifications are as follows:

(a) *REA Form 173 Materials Contract.* No modifications.

(b) *REA Form 180 Construction Contract Amendment.* No modifications.

(c) *REA Form 198 Equipment Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) Change section 5(e) of the "Equipment Contract" to read as follows:

"(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser, and further the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser."

(2) Delete Section 5(f) of the "Equipment Contract."

(d) *REA Form 200 Construction Contract—Generating.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Contractor's Proposal, Article II, Section 3(a), Sentence 2.* Delete the words "and the Administrator."

(2) *Contractor's Proposal, Article II, Section 3(d), Sentence 2.* Delete the words "and approved by the Administrator [1]" and the associated footnote.

(3) *Contractor's Proposal, Article VI, Section 7.* Change to read as follows:

"Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner and the Surety or Sureties, if any."

(4) *Contractor's Proposal, Article VI.* Delete Section 10.

(5) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(e) *REA Form 201 Right-of-Way Clearing Contract.* No modifications.

(f) *REA Form 203 Transmission System Right-of-Way Clearing Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows.

(1) *Notice and Instructions to Bidders, Section 8.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1(a).* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 3(d), Sentence 1.* Delete the words "and with the approval of the Administrator [1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 3(d), Sentence 3.* Delete the words "and approved by the Administrator [2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1(b).* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1(e).* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1(d).* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(g) *REA Form 238 Construction or Equipment Contract Amendment.* If the contract amendment does not require REA approval, in accordance with § 1726.24(b), the borrower may delete from REA Form 238 the following sentence:

"(The Administrator of REA is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval.)"

(h) *REA Form 257 Contract to Construct Buildings.* No modifications.

(i) *REA Form 282 Subcontracts.* The applicable modifications are as follows:

(1) *Section 6, line 3.* Delete the words "and the Administrator of the Rural Electrification Administration (hereinafter called the Administrator)."

(2) *Section 7, line 2.* Change Section 7, line 2 to read as follows:

"approved in writing by the Owner and the Surety, if any; provided, * * *"

(3) *Section 7, line 3.* Delete the words "and the Administrator."

(j) *REA Form 764 Substation and Switching Station Erection Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.a.* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 1.d, Sentence 1.* Delete the words "and with the approval of the Administrator [1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 1.d, Sentence 2.* Delete the words "and approved by the Administrator [2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(k) *REA Form 786 Electric System Communications and Control Equipment Contract (including installation).* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Article I, Section 2.* Delete the words "subject to the approval of the Administrator [1]" and "and approved by the Administrator [2]" and the associated footnotes.

(2) *Article II, Section 1, Sentence 2.* Replace the word "Administrator" with "Purchaser."

(3) *Article II, Section 5.* Delete the words "subject to the approval of the Administrator [3]" and "subject to the approval of the Administrator [4]" and the associated footnotes.

(4) *Article III, Section 2, Sentence 3.* Replace the words "if the Administrator shall so approve" with the words "if the Purchaser shall so approve."

(5) *Article VI.* Delete Section 7.

(6) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(l) *REA Form 790 Distribution Line Extension Construction Contract (Labor and Materials).* No modifications.

(m) *REA Form 792 Distribution Line Extension Construction Contract (Labor Only).* No modifications.

(n) *REA Form 800 Construction Contract Amendment for Payment.* No modifications.

(o) *REA Form 830 Electric System Construction Contract.* No modifications.

(p) *REA Form 831 Electric Transmission Construction Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.d.* Delete the words "with the approval of the Administrator [1]" and "and approved by the Administrator [2]" and the associated footnotes.

(3) *Contractor's Proposal, Article II, Section 4.a.* Delete the words "and approved by the Administrator [3]" and the associated footnote.

(4) *Contractor's Proposal, Article III, Section 1.a, Sentence 4.* Delete the words "and the Administrator."

(5) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(6) *Contractor's Proposal, Article III, Section 1.c.* Delete the words "and the Administrator" in four places in the referenced section.

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 11.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

§§ 1726.255—1726.299 [Reserved]

Subpart I—REA Standard Forms

§ 1726.300 List of REA standard contracting forms for electric systems.

The following is a list of the current REA standard contracting forms that REA has prepared for use by electric borrowers when purchasing materials and equipment and constructing facilities with an REA loan or loan guarantee. Copies of the contract forms are available from the sources indicated in the listing. A notice of any change in these contract forms will be published in the **Federal Register**.

REA ELECTRIC PROGRAM STANDARD CONTRACT FORMS

REA Form No.	Issue date	Title	Purpose	Source of copies [1]
168b	3–62	Contractor's bond	Used in REA Forms 200, 203, 764, 790, 830 & 831	In respective contract form.
168c	4–79	Contractor's bond (less than $1 million).	In lieu of REA Form 168b, used when contractor's surety has accepted a small business administration guarantee.	REA.
172	9–58	Certificate of Inspection Contract Construction.	Used to notify REA that construction is ready for inspection.	REA.
173	3–55	Materials contract	Used for distribution, transmission, and general plant material purchases.	REA.
180	8–66	Construction Contract Amendment.	Used to amend distribution line construction contracts.	REA.
181	4–72	Certificate of Completion Contract Construction for Buildings.	Used for the closeout of REA Form 257	REA.
187	3–66	Certificate of Completion Contract Construction.	Used in REA Forms 200, 830, and 831	In respective contract form.
198	3–73	Equipment Contract	Used for equipment purchases.	REA.
200	9–72	Construction Contract-Generating.	Used for generating plant construction or for the furnishing and installation of major items of equipment.	REA.
201	7–72	Right-of-Way Clearing Contract.	Used for distribution right-of-way clearing work which is to be performed separate from line construction.	REA.
203	3–72	Transmission System Right-of-Way Clearing Contract.	Used for transmission line right-of-way clearing work which is to be performed separate from line construction.	REA.
213	8–52	Certificate ("Buy American").	Used to document compliance with the "Buy American" requirement.	REA.
219	10–88	Inventory of Work Orders	Used to encumber funds	REA.
224	3–55	Waiver and Release of Lien.	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
231	4–72	Certificate of Contractor.	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.

REA ELECTRIC PROGRAM STANDARD CONTRACT FORMS—Continued

REA Form No.	Issue date	Title	Purpose	Source of copies [1]
238	4–72	Construction or Equipment Contract Amendment.	Used to amend contracts except for distribution line construction contracts.	REA.
251	5–53	Material Receipt	Used in REA Forms 764, 830, and 831	In respective contract form.
254	3–67	Construction Inventory	Used with the closeout of REA Forms 203, 764, 830, and 831.	REA.
257	3–73	Contract to Construct Buildings.	Used to construct headquarter buildings, generating plant buildings and other structure construction.	GPO.[2]
257a	10–69	Contractor's bond	Used in REA Form 257	In contract form.
270	7–70	Equal Opportunity Addendum.	Addendum to contracts not having current equal opportunity provisions.	REA.
274	6–81	Bidder's Qualifications	Used to document Bidder's Qualifications	REA.
282	11–53	Subcontract	Used for subcontracting	REA.
307	4–60	Bid Bond	Used In REA Forms 200, 203, 257, 764, 830 and 831.	In respective contract form.
458	3–55	Material Contract	Used to obtain generating plant material and equipment purchases over $10,000, not requiring acceptance tests at the project site.	REA.
764	8–72	Substation and Switching Station Erection Contract.	Used to construct substations and switching stations.	REA.
786	3–72	Electric System Communications and Control Equipment Contract.	Used for delivery and installation of equipment for system communications.	REA.
790	5–70	Distribution Line Extension Construction Contract (labor & materials).	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792	5–70	Distribution Line Extension Construction Contract (labor only).	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792a	10–62	Contractor's Bond	Used in REA Forms 201 and 792	In respective contract form.
792b	2–72	Certificate of Construction and Indemnity Agreement.	Used in REA Forms 201, 790, and 792	In respective contract form.
792c	5–70	Supplemental Contract for Additional Project.	Used in REA Forms 201, 790, and 792	In respective contract form.
800	6–81	Construction Contract Amendment for Payment.	Used for payment for materials delivered	REA.
830	8–72	Electric System Construction Contract (labor & material).	Used for distribution and/or transmission project construction.	GPO.[2]
831	2–73	Electric Transmission Construction Contract (labor & material).	Used for transmission project construction	GPO.[2]

NOTES: 1. A single copy of the form will be furnished by REA upon request. Additional copies may be duplicated or reproduced. Requests for copies should be sent to: Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250.

2. Requests for copies should be submitted to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone orders may also be placed, using Mastercard or Visa, by calling (202) 783–3238.

§ 1726.301 Use of printed forms.

If a REA contract form is required by this part, the borrower shall use the form in the format available from REA or GPO (photocopying or other exact reproduction is acceptable.) The contract forms are not to be retyped, changed, modified or altered in any manner not specifically authorized in this part or approved by REA in writing. Any modifications approved by REA must be clearly shown so to indicate that such are different from the standard form.

§ 1726.302 REA approved forms of contract.

If a specific REA contract form is required by a particular section of this part, the borrower shall use that form without changes or modifications or alterations unless, prior to issuing the bid package to bidders, REA has specifically approved any such changes to that form for that borrower. Any proposed changes shall not relieve the contractor or the borrower of the basic responsibilities required by the standard REA contract form, and, shall not alter any terms and conditions required by law. Changes permitted or required by subpart H of this part or by part 1788, REA Fidelity and Insurance Requirements for Electric and Telephone Borrowers, of this chapter are approved by REA under the circumstances indicated.

§ 1726.303 Interest on overdue accounts.

Certain REA contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such

invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

§§ 1726.304—1726.309 [Reserved]

§ 1726.310 Contractor's bond, REA Form 168b.

The bond form in this section shall be used when a Contractor's Bond is required by REA Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Electrification Administration Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____, 19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any character whatsoever.

4. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

5. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto, and they, and each of them, are hereby made obligees hereunder with the same force and effect as if their names were written herein as such, and they and each of them may sue hereon.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19____.

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety _____ (Seal)
By _____
Attest: _____ Secretary
_____Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.311 Contractor's bond, REA Form 168c.

The bond form in this section shall be used when a Contractor's Bond is required by REA Form 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

(Use only when contract is less than $1 million and Surety has accepted an SBA (Small Business Administration) Guarantee)

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Electrification Administration Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____,

19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. Provided, that the liability of the Principal and Surety hereunder to the Government shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the Owner, provided, however, that the Government may, at its option, perform any obligations of the Owner required by the contract.

4. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any character whatsoever.

5. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

6. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto. Provided, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms and corporations having a direct contract with the Principal or its subcontractors.

7. Provided, further, that no suit or action shall be commenced hereunder by any person, firm, or corporation who performed work or labor or who furnished materials for the project: (a) Unless such person, firm, or corporation, other one having a direct contract with the Principal (or with the Government in the event the Government is performing the obligation of the Owner), shall have given detailed written notice of claim to: The Principal, and the Owner, within ninety (90) days after such person, firm, or corporation did or performed the last of the work or labor, or furnished the last of the materials for which such claim is made. (b) After the expiration of one (1) year following the date on which Principal ceased work on said contract, it being understood, however, that if any limitation embodied in the Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to equal to the minimum period of limitation permitted by such law.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19_____.

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety _____ (Seal)
By _____
Attest: _____ Secretary
_____ Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.312 Construction contract amendment, REA Form 180.

The amendment form in this section shall be used when required by this part.

Construction Contract Amendment

Instructions—Submit 3 copies of this form & 3 copies of all attachments.

To: Administrator Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250.

1. Project Designation _____
2. Amendment No. _____
3. Date _____
4. Details of changes are tabulated on sheet _____ to _____ attached and are part of this amendment.
5. The following changes in Construction Contract Number _____ dated _____, 19_____ are hereby submitted for your approval.
6. Data pertinent to the original contract and amendments including this amendment are as follows (decrease to be preceded by (−) minus sign):

Consumers	Miles	Signed	Potential	Price
Original Contract:				
Amendment No. 1				
Amendment No. 2				

Consumers	Miles	Signed	Potential	Price
Amendment No. 3				
Amendment No. 4				
Amendment No. 5				
Amendment No. 6				
Total With This Amendment.				

7. Changes in materials furnished by Owner: This amendment provides for an increase/decrease of $_____ in the amount of materials furnished by Owner. The details of changes in items, quantities, or prices are tabulated on sheet _____ to _____ attached and made a part hereof.

8. Bond extension attached ____ Yes ____ No

9. The construction period will be changed _____ days.

10. New counties (if any) _____

11. Description and reason for change:

_____

This amendment providing for an increase/decrease of $_____ in the amount of said construction contract is submitted pursuant to the provisions thereof and pursuant to the loan contract between the United States of America and the undersigned borrower. You are hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet with your approval. To the extent the items hereof are approved by you the construction contract shall be amended.

Accepted

_____ Contractor

By _____ President-Owner-Partner (Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with REA.)

_____ Date

_____ Owner

By _____ President-Board of Directors

_____ Date

Approved

_____ Date

_____ Engineer for the Borrower

Details of Contract Amendment

Item No. _____

Assembly Unit Designation _____

Quantity Previously Approved _____

Net Change Number Of Units _____

Contract Amended To Read (Show quantities and prices as revised by this amendment):

Number of Units _____

Unit Price:

Labor _____

Material _____

Total _____

Total Price _____

Total Increase Price _____

Total Decrease _____

Totals _____

Net Total _____

[End of Clause]

§ 1726.313 Certificate of completion, contract construction for buildings, REA Form 181.

The closeout form in this section shall be used when required by this part.

Certificate Of Completion; Contract Construction For Buildings

_____ (Project Designation)

I, the undersigned Architect of the above-designated Rural Electrification Administration Project, hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____, including all approved amendments (hereinafter called the "Project"), between _____ ("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including the Plans and Specifications and all modifications thereto.

2. To the best of my knowledge, payment in full has been made to all persons who have furnished labor for the Project.

3. The Contractor has, to the best of my knowledge, obtained valid releases of lien from all Manufacturers, materialmen, and subcontractors that furnished materials or services or both which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered to the Owner.

4. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.

5. The final Contract Price of the Project as completed is _____ dollars ($_____).

_____ Date

_____ Representative of Architect

_____ Title

ACCEPTANCE

_____ Date

_____ Representative of Contractor

_____ Title

_____ Date

_____ Name of Owner

_____ President, Board of Directors

[End of Clause]

§ 1726.314 Certificate of completion, contract construction, REA Form 187.

The closeout form in this section shall be used when required by this part.

Certificate Of Completion; Contract Construction

To: Administrator
Rural Electrification Administration
U.S. Department of Agriculture, Washington, DC 20250

_____ (Project Designation)

I, the undersigned Engineer of the above-designated Rural Electrification Administration Project do hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____, including all approved amendments (hereinafter called the "Project"), between _____ ("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including all Plans, specifications, maps, and drawings and all modifications thereof.

2. Payment in full has been made to all persons who have furnished labor for the Project.

3. The Contractor has obtained valid releases of lien from all persons, firms and/or corporations furnishing materials, supplies, and appliances which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered by the Contractor to the Owner.

4. The Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of all work performed in accordance with the Construction Contract.

5. The staking sheets and tabulation of staking sheets upon which the Final Inventory is based show the accurate location, number, and kind of all units of construction of the project and show all work performed in accordance with the Construction Contract.

6. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.

7. The total cost of the Project as completed is _____ dollars ($_____). The Project consists of facilities shown on the Statement of Construction which is true and correct and which is attached hereto and made a part hereof.

Dated this _____ day of _____, 19____.

_____ Name of Engineer

By _____

_____ Title

_____ Date

Approved as to Items 1 and 6 above:

_____ REA Field Engineer

We, the undersigned Owner and Contractor, do hereby certify that:

1. The Project has been completed in accordance with the provisions of the Construction Contract, dated _____ 19____, provided, however, that acceptance of the Project by the Owner shall not be deemed to relieve the Contractor of its

obligations contained in the Construction Contract with respect to defective workmanship or, materials discovered within one year after the date of completion.

2. The Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of work performed in accordance with the Construction Contract.

_____ Owner
By _____ President
_____ Date
_____ Name of Contractor
By _____
_____ Title
_____ Date

[End of Clause]

§ 1726.315 Equipment contract, REA Form 198.

The contract form in this section shall be used when required by this part.

Equipment Contract

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing and delivery f.o.b. _____ of equipment for the _____ (hereinafter called the "Owner") which is to be part of the project known as _____ will be received by the Owner on or before _____ o'clock, _____ M., _____ 19_____, at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. The Plans and Specifications, together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____ at the latter's office at _____. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract (if the Project is to be financed in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender, may be examined at the office of the Owner.

3. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

4. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans and Specifications and forms of Equipment Contract on file with the Secretary of the Owner and with the Engineer, and all other matters, including transportation facilities, that may affect the cost and the time of completion of the work.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following: _____.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the Owner or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any contract which may be awarded thereon.

9. The Owner reserves the right to reject any or all Proposals.

_____ Owner
By _____
_____ Date

Proposal

To: _____ (hereinafter called the "Owner".)

1. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans and Specifications attached hereto and made a part hereof for the following prices: Item _____.

2. The prices of Equipment set forth herein shall include the cost of delivery to _____. Such delivery shall be made within _____ days after the receipt of the written order of the Owner.

3. This Proposal is made pursuant to the provisions of the Notice and Instructions to Bidders, if any shall be attached hereto, and the Bidder agrees to the terms and conditions thereof.

4. The Bidder warrants the accuracy of all statements contained in the Bidder's Qualifications, if any shall be submitted, and agrees that the Owner shall rely upon such accuracy as a condition of the Contract in the event that this Proposal is accepted.

5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any other person or persons bidding for the same work.

6. The Bidder agrees that, in the event this Proposal is accepted, it will execute a Contract in the form attached hereto.

7. The Bidder warrants that the Equipment will conform to the performance data and guarantees which are attached hereto and by this reference made a part hereof.

8. If, in submitting this Proposal, the Bidder has made any change in the form of Proposal or Contract furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the Contract.

9. The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

10. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

_____ Name of Bidder
_____ Address of Bidder
By _____
_____ Title of Officer
_____ Date

Equipment Contract

AGREEMENT made _____ 19_____, between _____ (hereinafter called the "Purchaser") and _____ (hereinafter called the "Seller"), a corporation organized and existing under the laws of the State of _____.

Whereas, the Purchaser desires to purchase and the Seller desires to sell the equipment described herein for the project financed in part or whole by a loan to the Purchaser from

the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") which project is designated _____.

Now Therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Section 1—Acceptance of Proposal

(a) The Purchaser accepts the Proposal which is attached hereto and by this reference made a part hereof, and the parties hereto agree that the Seller shall sell and deliver to the Purchaser and the Purchaser shall purchase and receive from the Seller the equipment (hereinafter called the "Equipment") described in the Proposal upon the terms and conditions herein stated.

(b) The prices set forth in the Proposal include the cost of delivery to _____.

(c) The prices set forth in the Proposal do not include any sums which are or may be payable by the Seller on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Purchaser.

Section 2—Delivery

The Seller shall deliver the Equipment within _____ days after receipt of the written order or orders of the Purchaser. The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, and floods.

Section 3—Payment

Upon the shipment of any Equipment hereunder, the Seller shall submit to the Purchaser a detailed statement of the Equipment shipped. The Purchaser shall, upon receipt of the Equipment, pay the Seller ninety percent (90%) of the contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Purchaser, the Purchaser shall make final payments therefor to the Seller; provided, however, such final payment shall be made not later than one-hundred eighty (180) days after delivery of the Equipment, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 4—Defective Material and Workmanship

(a) All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator and the Seller shall furnish all information required concerning the nature or source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Seller.

(b) The Equipment furnished hereunder shall become the property of the Purchaser upon delivery, provided, however, that the Purchaser or the Administrator, within one year after delivery or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Seller and the manufacturer. Upon any such rejection, the Seller shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Purchaser and in the event of failure by the Seller so to do, the Purchaser may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Seller.

Section 5—Miscellaneous

(a) All manufacturers' guarantees of Equipment, if any, shall be transferred and assigned to the Purchaser upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Seller by other provisions of this Contract.

(b) The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for infringement of any patent or patents covering Equipment purchased hereunder.

(c) In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

(d) During the performance of this contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Seller's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interest of the United States.

(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, that the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser and the Administrator, and further that the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser.

(f) This contract shall become effective only upon approval by the Administrator. Neither this contract nor any provision

thereof shall be modified, amended, rescinded, waived, or terminated without the approval in writing of the Administrator. Amendments executed on REA Form 238 are not subject to approval of the Administrator, except that when a contract amendment along with all previous amendments to this contract cause the total amended contract price to exceed 120 percent of the original contract price, as stated in the Seller's proposal and accepted by the Owner, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

In Witness Whereof,[1] the parties hereto have caused this contract to be signed in their respective corporate names by their presidents and their corporate seals to be hereunto affixed and attested by their secretaries, all as of the day and year first above written.

_____ Purchaser
By _____ President
Attest: _____ Secretary
_____ Seller
By _____ President
Attest: _____ Secretary

[1] When Seller is a corporation this section of agreement to be used.)

In Witness Whereof,[2] the Purchaser has caused this contract to be signed in its corporate name by its President and its corporate seal to be hereunto affixed and attested by its Secretary, and the Seller has (have) set his (their) hand(s), all as of the day and year first above written.

_____ Purchaser
By _____ President
Attest: _____ Secretary
_____ Seller
_____ Name
_____ Title
_____

[2] When Seller is an individual or partnership this section of agreement to be used. If a partnership—all partners shall sign.

[End of clause]

§§ 1726.316—1726.319 [Reserved]

§ 1726.320 Construction contract, generating, REA Form 200.

The contract form in this section shall be used when required by this part.

Construction Contract—Generating

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing, delivery and installation of equipment and materials for the electric generating plant of _____ (hereinafter called the "Owner") which is to be part of the system known as _____ will be received by the Owner on or before _____ o'clock ____ M., _____, 19____, at _____, at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Obtaining and Transferring Documents. The Plans and Specifications together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____, at the latter's office at _____ upon the payment of $_____, all of which will be refunded to each bona fide bidder within ten days after the bid opening. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through The Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), and of the Loan Contract between the Owner and any other lender may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers.

3. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

4. Familiarity with Conditions. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings and forms of Contractor's Proposal and Acceptance, and Contractor's Bond on file with the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the ecological and environmental criteria to be followed, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. The Time for Completion of the Project shall be as specified by the Engineer in the Proposal.

7. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

8. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties in a penal sum not less than the Contract price.

9. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts of the Proposal or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts of the proposal or to furnish a satisfactory Contractor's Bond (where required.)

10. Factors in Deciding the Award of the Contract. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the prices quoted in the Proposals, the following: _____.

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals.

14. Definition of Terms. The terms "Administrator", "Engineer", "Supervisor",

"Project", "Completion of Construction" and "Completion of the Project," as used throughout this Contract, shall be as defined in Article VI, Section 1 of the Contractor's Proposal.

15 The Owner Represents:

(a) If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available to the successful Bidder at the locations specified before the time such materials are required for construction.

(b) All funds necessary for prompt payment for the construction of the Project will be available. If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations, provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion, and provided, further, that such extension, if any, of the time of the completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a, hereof.

_____ Owner

By _____

_____, 19____

Contractor's Proposal

To Furnish, Deliver and Install Equipment and Materials TO: _____ (hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Furnish, Deliver and Install. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish, deliver and install the materials, supplies and equipment (hereinafter called the "Project") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto and made a part hereof, financed in part or whole by a loan to the Owner by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and designated _____.

Section 2. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, the ecological and environmental criteria to be followed, state and local laws and regulations which would affect work on the proposed construction.

Section 3. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's License No. _____ of the State of _____, in which the Project is located and said license expires on _____, 19____.

Section 4. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 5. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract Price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond. The Bidder understands, that, if in submitting this Proposal, the Bidder has made any change in the form of Proposal furnished by the Owner, that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the contract.

ARTICLE II—CONSTRUCTION

Section 1. Bid Price. The Bidder will construct the Project for the following sum:

Base Bid _____ Dollars ($ _____)
Alternate No. 1 _____ Dollars ($ _____)
Alternate No. 2 _____ Dollars ($ _____)

Section 2. Taxes. The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project. The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

Section 3. Time and Manner of Construction.

(a) The time of Completion of Construction of the Project is of the essence of this Contract. The Bidder will commence the work within _____ calendar days after the Owner shall have given the Bidder written notice to commence construction, will prosecute diligently and complete such construction to the satisfaction of the Owner and the Administrator within _____ calendar days after giving of such notice.

(b) The time of Completion of Construction shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without fault of the Bidder, including Acts of God, fires, strikes, floods, inability to obtain materials, changes in the Specifications as herein provided and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) In the sequence of construction, the Owner, acting through the Engineer, shall have the right to direct the Bidder to perform any part or parts of the work which is to be performed at the site of the Project before any other part or parts, of such work and the Bidder agrees to comply with all such directions. The Bidder shall comply with all other reasonable directions of the Owner.

(d) The Owner, acting through the Engineer, may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans and Specifications and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. If the cost of the Project to the Bidder to make the change shall be increased or decreased, the contract price shall be amended by an amount equal to the reasonable cost hereof in accordance with a construction amendment signed by the Owner and the Bidder and approved by the Administrator,[1] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The reasonable cost of any increase or decrease in the contract price covered by contract amendment as outlined above, in the absence of other mutual agreement, shall be computed on the basis of the direct cost of materials, f.o.b. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance, not to exceed ten percent of payroll cost of labor), plus _____ percent of the direct cost of materials and labor. Labor costs shall be limited to the direct costs for workmen and foremen. Costs for profit and overhead for subcontractors, if any, Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 4. The Bidder agrees that in the event this Proposal is accepted it will make

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 5. Supervision and Inspection.

a. The Bidder will give sufficient supervision to the work, using its best skill and attention. The Bidder will carefully study and compare all drawings, specifications and other instructions and will at once report to the Owner any error, inconsistency or omission which it may discover. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kinds of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered.

Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner through its Engineer, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 6. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, including the installation and removal thereof, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment, or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding the acceptance of workmanship, materials, supplies or equipment, or the giving of any certificate with respect to the completion of the work, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of the Contract or the Specifications, the workmanship, materials, supplies or equipment shall be found to be defective or not in conformity with the requirements of the Specifications, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice of the existence thereof shall have been given to the Bidder by the Owner. In event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of estimates thereof certified to by the Bidder, and approved by the Engineer and by the Owner solely for the purpose of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials; and provided further, that in estimating the amount of construction accomplished, consideration shall be given only to equipment and materials incorporated into the Project and equipment and materials delivered to the site in accordance with approved shipping schedule. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project. Upon completion by the Bidder of the construction of the Project, the Engineer shall inspect the work performed hereunder and if he shall find the work acceptable and all provisions hereunder fully performed, he shall so certify to the Owner and shall certify the balance found to be due the Bidder.

The Certificate of Completion, Contract Construction, REA Form 187, a copy of which is attached hereto, after it has been signed by the Engineer and certified to by the Owner and the Bidder shall thereupon be submitted to the Administrator for his approval and when such approval has been given, the Owner shall make payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder unless withheld because of the fault of the Bidder.

b. Interest at the rate of _____ percent[2] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due the Bidder commencing fifteen (15) days after the due date: Provided that the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of construction completed during the preceding month, and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for any reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection "b" shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

c. No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal and the Owner may withhold from the Bidder the amount of any claim by a third party against either the

[2] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens and Certificate of Contractor. (See Sample REA Form 224, Waiver and Release of Lien, and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the total cost of construction, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto, from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project and a certificate in the form attached hereto to the effect that all labor used on or for the project has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times exercise reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the work he shall remove all rubbish from and about the Project and all his tools, scaffolding and surplus materials and shall leave his work "broom clean". The Bidder shall dispose of waste material by burying it on the work site or in a manner approved by local authorities, but shall not dispose of any waste materials or rubbish by open burning. The Bidder shall provide chemical sanitary facilities which may be required in compliance with applicable local, State and Federal laws or regulations.

(b) The Bidder will perform the work in such a manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape, erosion of soils and oil spillage. There will be no depositing of trash in streams or waterways. Herbicides, other chemicals or their containers will not be deposited in or near streams or waterways.

(c) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control, in whole or in part as hereinafter provided, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials, supplies and equipment to be used therein shall be borne by the Bidder, except risk of loss or of damage to materials or equipment furnished for or used in connection with the Project by the Owner, Bidder or any subcontractor, caused by fire, lightning, wind damage, explosion, riot or civil commotion, aircraft and other vehicles, and smoke damage (against which perils the Owner will maintain insurance, hereinafter called "Builder's Risk Insurance"). The Bidder will make good and fully repair all injuries and damages to the Project, or any portion thereof under the control of the Bidder by reason of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence, except damage covered by the Owner's Builder's Risk Insurance.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents giving such data as may be prescribed by the Engineer.

(e) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be

transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Section 4. Delivery of Possession and Control to Owner. Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Article IV, Section 1c hereof with respect to such portion so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third parties in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy which the Owner may exercise hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Purchase of Materials. The Bidder shall purchase all materials, supplies, and equipment outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. All materials, supplies and equipment shall be new and shall become the property of the Owner when erected in place, or when the Owner shall have made any payment to the Bidder in respect of such materials; whichever shall occur first.

Section 3. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 USC Section 287 and 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____; has not ____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner, the Surety or Sureties, if any, and the Administrator.

Section 8. Subcontracts. The Bidder shall not enter into any subcontract or subcontracts with any person, firm or corporation for the performance of the Bidder's obligation hereunder in any aggregate amount in excess of 40% of the Bidder's obligations (to be calculated on the basis of the total contract price) nor shall the Bidder enter into any subcontract in excess of $20,000, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Administrator for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval of the Administrator. The acceptance of this Proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within sixty (60) days after the date set for the opening of proposals.

_____ (Bidder)
By _____ (President)
_____ (Title)
_____ (Address)
Attest:
_____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, the Owner, _____, hereby accepts the Proposal of the above-named Bidder for the construction of the Project therein described for the Base Bid of $ _____ and
Alternate No. 1 $ _____
Alternate No. 2 $ _____
The total contract price is $ _____
_____ (Owner)
By _____ President
Attest:
_____ (Secretary)
_____ Date of Contract

[End of clause]

§ 1726.321 Right-of-way clearing contract, REA Form 201.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from REA (See § 1726.300.).

Right-of-Way Clearing Contract

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)
To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Clear. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for the rural electric system bearing the REA Designation _____ in strict accordance with the Specifications and Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Project. The Project will consist of approximately _____ miles of right-of-way clearing. The Project is located in _____ counties in the State of _____.

Section 3. Description of Contract. The Description of Units, Specifications, Drawings and Plans attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the Contract. The Plans consisting of maps and plan and profile sheets if transmission clearing is included, showing the number and types of right-of-way units that are to be cleared, along with other special drawings are identified as follows:

Section 4. Familiarity with Conditions. The Contractor warrants that it has made careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractors' Bond attached hereto, and has

become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 5. License. The Contractor warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's license number _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 6. Contractor's Bond. If the estimated cost of the clearing of a Section shall exceed $100,000, the Contractor agrees to furnish, prior to the commencement of work on such Section, a bond in the penal sum of not less than the estimated cost of the Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 7. Taxes. The unit prices for Right-of-Way Clearing Units in this Proposal include any sums which are or may be payable by the Contractor on account of taxes imposed by any taxing authority on payments for materials furnished or services performed by the Contractor under the terms of this Contract.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Work.

(a) The Contractor agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Owner after its acceptance of this Proposal, but in no event will the Commencement Date be later than _____ calendar days after date of acceptance of this Proposal. The Contractor further agrees to prosecute diligently and to complete clearing in strict accordance with the Specifications and Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Contractor, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Contractor subject to the approval of the Owner.

(d) The Owner may from time to time during the progress of the work on the Project make such changes in, additions to or subtractions from the Specifications, Drawings and sequence of work provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the work to be done shall require an extension of time, a reasonable extension will be granted if the Contractor shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Contractor of completion of the Project shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Contractor will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Contractor shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Contractor shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Supervision and Inspection.

(a) The Contractor shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Contractor shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Contractor.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner The Owner shall have the right to require the Contractor to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of its obligations to complete the work within the time and in the manner specified in this Proposal.

(c) The manner of performance of the work and all equipment used therein, shall be subject to the inspection and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner shall determine that the work contains or may contain numerous defects, it shall be the duty of the Contractor and the Contractor's Surety or Sureties to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Contractor suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the Contract: Provided, however, that the Contractor shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this Contract. In the event that work is suspended by the Contractor with the consent of the Owner, the Contractor before resuming work shall give the Owner at least twenty-four (24) hours' notice thereof in writing.

Section 4. Unsuitable Workmanship. The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Contractor. The Contractor shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been remedied.

ARTICLE III—PAYMENT

Section 1. Payments to Contractor.

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for work

accomplished during the preceding calendar month on the basis of a statement of completed clearing units furnished and certified to by the Contractor and approved by the Owner solely for the purposes of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such statement approved during the clearing of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the clearing of a Section, the Contractor shall prepare a Final Inventory of the Section showing the total number and character of clearing units and shall deliver to the Owner a Certificate of Contractor and Indemnity Agreement in the form attached hereto, showing the total cost of the work performed and stating (1) that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full and (2) that the Contractor shall hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner. Upon the approval of such certificate, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

(b) The Contractor shall be paid on the basis of the number of clearing units actually completed at the direction of the Owner shown by the Final Inventory: Provided, however, that the total cost shall not exceed the total contract price for the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Owner.

(c) No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of the Contract.

(d) If no Sections are designated in Article II, Section 1 (c) the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3 (b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the total contract price as stated in the Acceptance.

(e) Interest at the rate of _____ percent[1] (_____%) per annum shall be paid by the Owner to the Contractor on all unpaid balances due on monthly statements, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Contractor. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Contractor on or before the fifth day of such month shall have submitted its certification of right-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If for reasons not due to the Contractor's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (e) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(f) Interest at the rate of _____ percent[2] (_____%) per annum shall be paid by the Owner to the Contractor on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Owner of the Final Inventory and receipt of the Certificate of Contractor and Indemnity Agreement as conditions precedent to the making of final payment.

Section 2. Payments to Subcontractors. The Contractor shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of services performed by each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, state, and municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, state, or municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Contractor shall so conduct work on the Project as to cause the least possible obstruction of public highways.

(b) The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

(c) The Contractor shall do all things necessary or expedient to properly protect any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of work on the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(d) Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during work on the project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to work on the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by work on the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Contractor for access to the route of the Project lines from public roads to carry on the work.

(e) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the work on the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of an act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(f) Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures.

(g) Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

(h) The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(i) The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Contractor shall take out and maintain throughout the period of this Agreement the following minimum amounts of insurance:

(a) Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to the Owner.

(a) Upon written request of the Owner, the Contractor shall deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of the work of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1(e) of this Article IV with respect to such portion so delivered to the Owner, shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1(c) and Article III, Section 1(d) shall have been completed by the Contractor, the Owner agrees, after receipt of a written request from the Contractor, to accept delivery of possession and control of such Section upon having inspected the Section and having found the work acceptable. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Contractor as set forth in Article IV, Section 1(e) hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner prior to the time the Contractor receives final payment for any Section.

ARTICLE V—REMEDIES

Section 1. Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the work on the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. The time of the Completion of Clearing is of the essence of the Contract. Should the Contractor neglect, refuse or fail to complete the clearing within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such monies which may be then due, or which may become due and payable to the Contractor the sum of _____ dollars (_____) per day for each and every day that such work is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Contractor to complete the clearing within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The term *Engineer* shall mean the engineer employed by the Owner to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives. The term "Engineer" will mean "Owner" if no engineer is employed by the Owner to provide engineering services.

(b) The term *Completion of Clearing* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof except the Contractor's obligations in respect of furnishing (1) the "Certificate of Contractor and Indemnity Agreement" and (2) the Final Inventory both referred to in Article III, Section 1 hereof.

(c) The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 2. Patent Infringement. The Contractor shall save harmless and indemnify the owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4. Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 286, 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

(a) Contractor's Representations.

The Contractor represents that:

It has ____, does not have____, 100 or more employees, and if it has, that it has ____, has not____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontractor for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100. The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify, the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, state, county, municipal or other authority; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Contractor shall not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
Date of Proposal _____

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

Right-of-Way Clearing Units:

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up of the width specified on one side of the line of poles carrying primary conductors. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-way, as designated by the Engineer shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor; of danger trees outside of the right-of-way when so designated by the Engineer. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line poles carrying conductors. (See Detail A, Drawing TM–12–2A). The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees of the right-of-way that he deems to be a hazard to the line and will designate them to the Contractor in writing as danger trees. When so designated, the Contractor shall remove or top such trees at his option except that the Contractor shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees).

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G, and H, Drawing TM–12–2A). Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A). Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G, and H, Drawing TM–12–2A, total .1 of a TM–13 unit).

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

TM–15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line. (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way, in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly,

and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared, and trees trimmed so that the right-of-way shall be clear from the ground up or as specified. Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where RC or TMC units are specified, the right-of-way shall be cleared in accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer.

Right-of-Way Units

DISTRIBUTION CLEARING UNITS

Unit No.	No. of Units	Unit Price	Extended Price
	.....	.....	.....

Total _____

TRANSMISSION CLEARING UNITS

Unit No.	No. of Units	Unit Price	Extended Price
	.....	.....	.....

Total _____
Total Distribution and Transmission _____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Contractor, _____ for the following:

Total Distribution Clearing: $_____
Total Transmission Clearing: $_____
The total contract price is $_____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.322 Transmission system right-of-way clearing contract, REA Form 203.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from REA (See § 1726.300.)

Transmission System Right-of-Way Clearing Contract

Notice and Instructions to Bidders

1. Sealed proposals for the clearing of underbrush and trees from right-of-way, including the supply of necessary labor and equipment, of a rural electric system of _____ (hereinafter called the "Owner") bearing the REA Designation _____ will be received by the Owner on or before _____ o'clock ____ M., _____ 19_____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project. The Project will consist of approximately: _____ miles of right-of-way clearing. The Project is located in _____ Counties in the State of _____.

3. Obtaining and Transferring Documents. All necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the Administrator), and any other lender's contract may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the recipient will be recorded by the Engineer. Bids will be accepted only from the original recipient.

4. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

5. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Specifications, Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

6. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

7. The time for Completion of the Project shall be as specified by the Engineer in the Proposal.

8. Bid Bond. Each Proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such bid bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposals is not one of the three low Proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

9. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

10. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto and the Bidder shall not claim any

modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals.

14. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

15. The Owner represents:

a. All easements and rights-of-way, except as shown on maps included in the Specifications, have been obtained from the Owners of the properties across which the project is to be carried out (including tenants who may reasonably be expected to object to such clearing). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

b. Prompt payment for the work to be done will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing.

_____ Owner

By _____

_____, 19_____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten).

To: _____ (Hereinafter called the "Owner").

ARTICLE I—GENERAL

Section 1. Offer to Clear. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for rural electric system bearing the REA Designation _____ in strict accordance with the Specifications and Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Contract. The Notice and Instructions to Bidders and Specifications attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the contract. The Specifications consisting of maps, plan and profile sheets showing the number and types of right-of-way units that are to be cleared for each parcel, along with other special drawings are identified as follows: _____.

Section 3. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 4. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's license number _____ for the State of _____ in which the Project is located and said license expires on _____, 19_____.

Section 5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 6. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

ARTICLE II—CONSTRUCTION

Section 1.—Time and Manner of Work

(a) Bidder agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Specifications and Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omission of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

(d) The Owner, acting through the Engineer and with the approval of the Administrator[1], may from time to time during the progress of the work on the Project make such changes in additions to or subtractions from the Specifications, Drawings, and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Bidder and approved by the Administrator[2], but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2.—Environmental Protection

The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There should be no deposition of trash in streams

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures. The Bidder will be required to follow, under the general direction of the engineer, the criteria relating to environmental protection as specified herein by the engineer.

Section 3.—Supervision and Inspection

(a) The Bidder shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Bidder shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this proposal.

(c) The manner of carrying out the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner, or the Administrator, shall determine that the work contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 4.—Unsuitable Workmanship

The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Bidder. The Bidder shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been remedied.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1.—Payments to Bidder

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for work accomplished during the preceding calendar month on the basis of completed rights-of-way clearing units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of rights-of-way clearing units and, after checking such inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payments shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

(b) The Bidder shall be paid on the basis of the number of rights-of-way clearing units actually completed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

(c) Notwithstanding the provisions of Section 1(a) above, the Bidder may, by giving written notice thereof to the Owner elect to receive payment in full for any Section of the Project upon:

(1) Completion of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) Submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) Approval by the Owner and the Administrator of the inventory in respect of such Section; and

(4) Submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of Project.

If no Sections are designated in Article II, Section 1(c), the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3(b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1.

(d) Interest at the rate of _____ percent[3] (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided: (1) The Bidder on or before the fifth day of such month shall have submitted its certification of rights-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (d) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(e) Interest at the rate of _____ percent[4] (_____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

(f) No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2.—Release of Liens and Certificate of Contractor

(See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the Completion of Clearing by the Bidder (or any Section thereof if the Bidder shall elect to receive payment in full for any section when completed as provided above) but prior to final payment to the Bidder the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3.—Payments to Subcontractors

The Bidder shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of work performed by each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1.—Protection to Persons and Property

The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

(b) The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of Public highways.

(c) The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

(d) The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(e) Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

(f) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(g) Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses. There should be no disposition of trash in streams or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures.

(h) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

(i) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(j) The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance

The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3.—Delivery of Possession and Control to Owner

(a) Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1 (f) hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 4 hereof.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1 (c) and Article III, Section 1 (c) shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1 (f) hereof with respect to such Section so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion of Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties if any, the Owner may take over the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties if any, shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession, of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the Project within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

(b) The term *Engineer* shall mean the engineer employed by the Owner with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

(c) The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

(d) The term *Completion of Clearing* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Clearing.

Section 2. Patent Infringement. The Bidder shall save harmless and indemnity the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 4. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. Sections 286, 287 and 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies leaving jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts of federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total contract price. The Bidder shall not assign the contract effected by an acceptance of this proposal or any interest in any funds that may be due or become due hereunder or enter into contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligation hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties, if any, on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and Agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator. No acceptance of this Proposal shall become

effective until approval in writing of the Administrator; Provided, however that no obligations shall arise hereunder unless such approval is given within sixty (60) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the Corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.)

All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of way center line) of actual clearing of the right-of-way.

Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A).

Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When Specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as an Engineer will direct (Engineer to strike out methods not to be used).

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____.

TRANSMISSION RIGHT-OF-WAY UNITS

Unit No.	No. of units	Unit price	Extended price
Total			

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

The total contract price is $ _____

_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared, and trees trimmed so that the right-of-way shall be clear from the ground up as specified in the Proposal. Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right-of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where TMC–12, TMC–12–(1) units are specified, the right-of-way shall be cleared in

accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer.

[End of clause]

§ 1726.323 Certificate (Buy America), REA Form 213.

The closeout form in this section shall be used when required by this part.

Certificate

With respect to compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938).

Rural Electrification Administration
Project _____.

The undersigned, being the _____ [1], in a certain contract No. _____ dated _____, 19_____, between the undersigned and _____ [2], does hereby certify that in the performance of the said contract there have been used or furnished no unmanufactured articles, materials or supplies which have not been mined or produced in the United States, Mexico, or Canada and no manufactured articles, materials or supplies which have not been manufactured in the United States, Mexico, or Canada substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be in the United States, Mexico, or Canada, except to the extent that compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 22, 1938) has been waived by the Administrator of the Rural Electrification Administration.

By _____
Date _____, 19 _____

[End of clause]

§ 1726.324 Waiver and release of lien, REA Form 224.

The closeout form in this section shall be used when required by this part.

Waiver and Release of Lien

Whereas the undersigned, _____ (name of manufacturer, materialman or subcontractor) has furnished to _____ (name of contractor) the following: _____ (kind of material and services furnished) for use in the construction of a Project belonging to _____ (name of borrower) and designated by the Rural Electrification Administration as _____ (REA project designation).

Now, Therefore, the undersigned, _____ (name of manufacturer, materialman or subcontractor) for and in consideration of $_____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of said _____ (name of contractor) for said project.

Given under my(our) hand(s) and seal(s) this _____ day of _____, 19_____.

_____ Name of manufacturer, materialman or subcontractor

By _____ President, vice president, partner or owner, or, if signed by other than one of the foregoing, accompanied by power of attorney signed by one of the foregoing in favor of the signer. (Use designation applicable.)

[End of clause]

§ 1726.325 Certificate of contractor, REA Form 231.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor

_____ certifies that he is the _____ (Title of Office) of _____ (Name of Contractor), the Contractor, in a Construction Contract No. _____ dated _____, 19_____, entered into between the Contractor and _____ (Name of Borrower) the Owner, for the construction of a Project, which bears the Rural Electrification Administration Project Designation _____ and that he is authorized to and does make this certification on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of said Construction Contract.

Undersigned further says that all persons who have furnished labor in connection with said construction have been paid in full, that the names of manufacturers, materialmen and subcontractors that furnished material or services or both in connection with such construction and the kind or kinds of material or services or both so furnished are:

Name _____
Kind of Material and Service _____

and that the releases of liens executed by all such manufacturers, materialmen and subcontractors have been furnished the Owner.

Date _____
Signature _____

[End of clause]

§ 1726.326 Construction or equipment contract amendment, REA Form 238.

The amendment form in this section shall be used when required by this part.

Construction or Equipment Contract Amendment

Project Designation _____
Date _____
Amendment No. _____
Contract No. _____
Bond extension attached ____ Yes ____ No
Delivery or Completion Date: Original _____
As Amended _____

Instructions: 1. The Architect-Engineer shall submit three (3) copies of this form for each contract which has been approved by REA, to the Owner. 2. The Owner will submit the three (3) copies of this form to REA for approval.

Reasons for, and details and description of the amendment _____ (If additional space is needed, use reverse or separate sheet)

A summary of the original contract price and amendments thereto, including this amendment, follows: (Amendments which decreased the price are preceded by a (−) minus sign).

Original Contract Price, $_____
Amendment Number 1, $_____
Amendment Number 2, $_____
Amendment Number 3, $_____
Amendment Number 4, $_____
Amendment Number 5, $_____
Amendment Number 6, $_____
Amendment Number 7, $_____
Amendment Number 8, $_____
Amended Contract Price, $_____

This amendment, providing for an increase of $_____ / decrease of $_____ in the contract price is submitted pursuant to the provisions of said contract. (The Administrator of REA is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval). To the extent the items hereof are approved the contract shall be amended.

Accepted
_____ Contractor
By _____ President-Owner-Partner (Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with REA.)
_____ Date
_____ Owner
By _____ President-Board of Directors
_____ Date
Approved
_____ Architect-engineer
_____ Date

Item No.	Reasons for and Description of Contract Amendment No. _____	Labor or Installation [1]	Material or Equipment [1]	Total
	Net Total .			

[1] Changes in Cost (decrease preceded by (−) minus sign.) To be filled in when applicable.

[End of clause]

§ 1726.327 Material receipt, REA Form 251.

The receipt form in this section shall be used when a Material Receipt is required by REA Form 764, 830, or 831

Materials Receipt

Instructions: Prepare three (3) copies. Forward original to Owner, one copy to Contractor and one copy to Engineer.

Date _____

[1] Insert "Contractor," "Subcontractor," "Seller" or "Materialman," as the case may be.

[2] Insert the name of the REA Borrower.

Item[1]	Quantity	Description of Item	Manufacturer and Catalog Number	Unit Price	Extended Price
Total					

Notes: 1. Item corresponds with item in list of materials in construction drawings.

Received by _____
For:
_____Contractor
_____Owner
[End of clause]

§ 1726.328 Construction inventory (for labor and material contract), REA Form 254.

The closeout form in this section shall be used when required by this part.

Construction Inventory (For Labor and Material Contract)

Date _____
Project Designation _____
Borrower _____
Engineer _____
Contractor _____

Amount Payable to Contractor

A. Total Cost of Standard, New And Conversion Assembly Units Installed (Total No. 6, REA Form 254a) $____

B. Cost To Remove "I" Units (Total No. 7, REA Form 254a) $_____

C. Amount To Be Credited To Contractor For Materials Removed From Existing Facilities And Returned (Total No. 14, REA Form 254b) $_____

Subtotal $_____
Deduct:

D. Amount Chargeable To Contractor For Materials In Assembly Units Removed (Total No. 9, REA Form 254a) $_____

E. Net Amount Of Owner-furnished Materials (Total No. 24 REA Form 254c) $_____

F. Net Amount Due Contractor (In making final payment to Contractor, the net amount due the Contractor, as shown by this Certification, will be reduced by the sums, if any, due the Owner for liquidated damages, payment made to date, or other sums which the Owner has the right to retain under the terms of the Contract, and signature by all parties does not preclude the retention by the Owner of such amounts.) $_____

Certificate of Engineer

I certify that to the best of my knowledge and belief the attached final inventory correctly shows the total number and character of assembly units installed and removed by the Contractor and that the net amount of $_____ due the Contractor, as shown above, is true and correct.

Engineer _____
By _____
Date _____

Acceptance by Owner

Owner _____
By _____ President
Date _____

Acceptance by Contractor

Firm _____
By _____
Date _____

Instructions

(See REA Bulletin 1767B–3, Preparation and Use of REA Form 254, for additional instructions.)

The Engineer will prepare 5 copies of REA Form 254 and 254a, also 5 copies of Forms 254b and 254c when applicable. Original and 1 copy to be forwarded to REA, 1 copy to Contractor, 1 copy to Owner, and 1 copy to be retained by Engineer.

Calculation of amount payable to Contractor will employ data taken from Nos. 1 through 25, REA Forms 254, 254a, 254b, 254c. The amounts to be inserted opposite Items A, B, C, D, and E on REA Form 254 are indicated in the texts of those items. Nos. 1 through 17, Forms 254a and 254b: (Form 254b is required only when "I" removal units are included in the Contract.)

No.—Source of Information

1 and 2—From tabulation of staking sheets.[1]
3 and 4—From Contract.
5—No. 3 plus No. 4.
6—No. 1 multiplied by No. 5.
7—No. 1 multiplied by No. 3 (for "I" units only).
8—From Table C of Contract.
9—No. 1 multiplied by No. 8 for "I" removal units only. (Table C relates solely to "I" units.)
10, 11, and 12—From Engineer's and Owner's records.
13—From Table D in Contract.
14—No. 12 multiplied by No. 13.
15—From Engineer's records. (Quantities shall be listed opposite the appropriate material items described in No. 11.)
16—From individual stock record card for each material item listed.
17—No. 15 multiplied by No. 16.

Data shown on Form 254c to be presented under the following headings, as appropriate:

PART I—MATERIAL ITEMS INCLUDED IN LISTS SET FORTH IN CONSTRUCTION CONTRACT

PART II—OTHER MATERIAL ITEMS FURNISHED BY OWNER

Nos. 18 through 25: (Form 254c is required only when there are owner-furnished materials.)

No.—Source of Information

18 and 19—From Contract and Material Receipts.

[1] Standard units will be listed first, followed by new units and conversion units, in that order, with all "I" removal units being listed last.

20—From charge-out and credit tickets covering materials issued to and returned by the Contractor.[2]
21—From average unit costs on charge-out and credit tickets relating to this construction, such costs in turn being taken from the average unit costs reflected by the stock record cards for the applicable period.
22—No. 20 multiplied by No. 21.
23—For Part I, from the unit prices specified in the Contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered."
For Part II, from the actual unit costs to Owner—the same as used in No. 21.
24—No. 20 multiplied by No. 23.
25—No. 24 minus No. 22. (if a minus quantity, enter in parentheses.)

See 7 CFR 1726, Electric System Construction Policies and Procedures, for instructions regarding distribution of the completed form.

Reference should be made to REA Bulletin 1767B–3, Preparation and Use of REA Form 254, for instruction in accounting for all contract costs, including the retirement of units removed by the Contractor and the unitization by record units of costs of construction assemblies installed by the Contractor.

REA Form 254a
Assembly Units:
1. Quantity _____
2. Standard (N—New, H—Conversion, I—Removal) _____ Due to Contractor for Units Installed, Converted, and Removed
3. Labor (Unit Price) _____
4. Material Unit Price (Except I Units) _____
5. Total Unit Price (No. 3 + No. 4) (Except I Units) _____
6. Cost of Construction (No. 1 x No. 5) (Except I Units) _____
7. Cost to Remove "I" Units (No. 1 x No. 3) _____

Amount Chargeable to Contractor for Materials in Assemblies Removed.
8. Unit Values (Table C in Contract) _____
9. Total (No. 1 x No. 8) _____
Total (No. 6) _____
Total (No. 7) _____
Total (No. 9) _____
REA Form 254b

[2] The quantities shown in No. 20 should agree with Materials Receipts (REA Form 251) prepared in connection with the contact. The types of items of material and the quantity of any item of material listed under Part I of the tabulation should be limited to the type of items and should not exceed the quantity of any item of material specified in the construction contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered." Any additional items of material or excess quantities over the items specified in such lists are to be shown under Part II of the tabulation.

Summary and Classification Of Materials Returned to Owner by Contractor from "I" Removal Units.

Amounts to be Credited to Contractor for Materials Returned.

10. Item Designation _____
11. Description of Material _____
12. Quantity _____
13. Item Value—Table D in Contract _____
14 Total Credit to Contractor (No. 12 x No. 13) _____

Returned Materials Declared Reusable by Engineer.

15. Quantity of Items _____
16. Stock Card Item Price _____
17 Salvage Value (No. 15 x No. 16) _____
Total (No. 14) _____
Total (No. 17) _____
REA Form 254c

Tabulation of Net Amount of Materials Furnished by Owner.

18. Item Designation _____
19. Description of Material _____
20. Quantity _____

Actual Cost to Owner.

21. Unit Cost _____
22. Extended Cost (No. 20 x No. 21) _____

Amount Chargeable to Contractor at Contract Price.

23. Unit Cost _____
24. Extended Cost (No. 20 x No. 23) _____
25. Excess of No. 24 over No. 22 _____
Total (No. 22) _____
Total (No. 24) _____
Total (No. 25) _____

[End of clause]

§ 1726.329 Contract to construction buildings, REA Form 257.

The contract form in this section shall be used when required by this part.

Contract to Construct Buildings

Notice and Instructions to Bidders

1. Proposals: Sealed proposals for the construction, including the furnishing of all materials, machinery, labor and equipment, water, heat, utilities, transportation, and other means necessary for construction of the building(s) listed below (hereinafter called the "Project") to be financed _____ not to be financed _____ pursuant to a loan contract between _____ (hereinafter called the "Owner") and the United States of America, by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and designated as Project _____ will be received by the Owner on or before _____ o'clock _____ M _____ Time, _____, 19____, at its office located at _____ at which time and place the proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

Name or Kind of Building _____
Location _____

2. Obtaining Documents: The Plans and Specifications together with all other necessary forms and documents for bidders may be secured from _____ at _____ upon payment of _____ Dollars ($_____) which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. Additional sets of Plans and Specifications may be obtained upon payment of _____ Dollars ($_____) which payment will not be subject to refund. The Plans and Specifications may be examined at the office of _____. A copy of the loan contract may also be examined at the office of the Owner.

3. Manner of Submitting Proposals: Proposals and all supporting documents required to be attached thereto must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope, addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be filled in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

4. Familiarity With Conditions: Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, forms of Construction Proposal and Acceptance, and Contractor's Bond on file with the Secretary of the Owner and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of the soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions, and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. Time of Completion of Construction: The time of completion of construction of the Project shall be as specified by the Architect in the Proposal.

7. Bid Bond: Each proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder shall agree, provided its proposal is one of the three low proposals, that by filing its proposal together with such bid bond or check in consideration of the Owner's receiving and considering such proposal, said proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond (or Builder's Risk Policy) is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of proposals, whichever period shall be the shorter. If such proposal is not one of the three low proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the respective Bidder.

8. Contractor's Bond or Builder's Risk Policy: The successful Bidder will be required to execute two additional counterparts of the Proposal and to furnish:

(a) For contracts in amounts in excess of $100,000, a Contractor's Bond in the form attached to the Proposal with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

(b) For contracts in amounts of $100,000 or less, either a Contractor's Bond or a Builder's Risk Policy, whichever the Owner has specified below: (Check One)

_____ Contractor's Bond
_____ Builder's Risk Policy

9. Failure to Furnish Contractor's Bond or Builder's Risk Policy: Should the successful Bidder fail or refuse to furnish a Contractor's Bond (or Builder's Risk Policy) satisfactory to the Owner within fifteen (15) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference between the amount of the Proposal and such larger amounts for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has failed to furnish a satisfactory Contractor's Bond (or Builder's Risk Policy).

10. Contract Is Entire Agreement: The contract, effected by acceptance of the Proposal, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

11. Minor Irregularities: The Owner reserves the right to waive minor irregularities or minor errors in the Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal prior to its acceptance by the Owner.

12. Rejection of Proposals: The Owner reserves the right to reject any or all proposals.

13. Discrepancies: Where a discrepancy appears between the sum of the Base Bids of each building and the Total Base Bid, the correct addition of the Base Bid price for each building shall control.

14. The Owner Represents:

(a) If by provisions of the Proposal, the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations which may be determined by the bidders' inquiry of the Architect, or if such materials are not on hand, they will be made available by the Owner to the successful Bidder before the time such materials are required for incorporation into the Project.

(b) Title to the property on which the Project is to be constructed has been obtained.

(c) All funds necessary for prompt payment of the construction of the Project will be available.

If the Owner should fail to comply with any of the undertakings contained in the foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to an extension of the time of completion of Construction for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure to comply with any of the foregoing representations.

_____ Owner
By _____
Dated _____

Proposal

To: _____ (hereinafter called the "Owner"). The undersigned (hereinafter called the "Bidder") proposes to construct the building(s) listed in Section 1 of Article I (hereinafter called the "Project"), financed _____, not to be financed _____, in whole or in part by a loan to the Owner by the United States of America, by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, designated _____ and to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials, machinery, and equipment, water, heat, utilities, transportation and other means required to construct the Project in accordance with the plans and specifications (hereinafter called the "Plans and Specifications"), prepared by _____ (hereinafter called the "Architect") and dated _____, 19_____, and approved by the Rural Electrification Administration on _____, 19_____, and by this reference made a part hereof. The Bidder has made a careful examination of the site(s) on which the Project is to be constructed, has become informed as to the kind of facilities required before and during the construction of the Project and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if his bid is accepted, the following terms shall govern.

ARTICLE I—AMOUNT OF PROPOSAL

Section 1. Bid Price: The Bidder will construct the Project for the following sum:

Name or Kind and Location of Building _____
Base Bid _____
Total of Bid $_____
Alternate Bid No. 1 (add) (deduct) $_____
Alternate Bid No. 2 (add) (deduct) $_____
Alternate Bid No. 3 (add) (deduct) $_____
Alternate Bid No. 4 (add) (deduct) $_____

Section 2. Taxes: The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project. The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

ARTICLE II—CONSTRUCTION

Section 1. Time of Construction:

(a) The Bidder, after notification in writing of approval of the Construction Contract by the Administrator, if approval of the Administrator is required, will commence construction of the Project within _____ (_____) calendar days after the Owner shall have given the Bidder written notice to commence construction which notice shall be given:

(1) Not later than _____ (_____) calendar days after approval of the Construction Contract by the Administrator, if approval of the Administrator is required.

(2) On a date to be determined by the Owner. (The Architect will cross out the inapplicable statement (1) or (2) above before requesting bids.)

(b) The Bidder will prosecute diligently and complete construction of the Project in strict accordance with the Plans and Specifications and directions of the Architect within _____ (_____) calendar days after the expiration of the time specified to commence construction.

(c) The time for Completion of Construction herein set forth shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, direction by the Architect to cease construction during periods when in the judgment of the Architect it is impractical to perform any operation of construction and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible, provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner and provided further, that no delay in such time of completion or in the progress of the work which results from any of the above causes or from any changes in construction which may be made pursuant to Subsection (d) of this Section shall result in any liability on the part of the Owner.

(d) The Owner, acting through the Architect and with the approval of the Administrator, if approval of the Administrator is required, may from time to time during the progress of construction make revisions in the Project. If the revision is such as to require an extension in the time of construction, a reasonable extension shall be granted if the Bidder shall make a written request therefor to the Owner prior to the commencement of work in connection with such revision. If the cost of the Project to the Bidder to make revision shall be increased or decreased, the contract price shall be amended by an amount equivalent to the reasonable cost thereof by a Construction Contract Amendment signed by the Owner and the Bidder, and approved by the Administrator, if approval of the Administrator is required; but no claim for additional compensation for any revision will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such revision. The reasonable cost of any increase or decrease in the contract amendment as outlined above, in the absence of any other mutual agreement, shall be computed on the basis of the direct cost of materials, F.O.B. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance) plus twenty-five percent (25%) of the direct cost of materials and labor. Labor cost shall be limited to the direct costs for workmen and foremen. Costs for Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 2. Supervision: The Bidder will give sufficient supervision to the work, using his best skill and attention. He will carefully study and compare all drawings, specifications and other instructions, and report at once to the architect any error, inconsistency or omission which he may discover. The Bidder will make available during construction a competent superintendent and any necessary assistants, all satisfactory to the architect. The superintendent shall not be changed except with the consent of the Architect unless the superintendent proves to be unsatisfactory to the Bidder and ceases to be his employ. The superintendent shall represent the Bidder in his absence and all directions given to him shall be as binding as if given to the Bidder. When requested, such directions shall be confirmed in writing.

Section 3. Shop Drawings: The Bidder, after reviewing, will submit to the Architect, with such promptness as to cause no delay in the work two copies of all shop or setting drawings and schedules required for the work of the various trades, and the Architect shall pass on them with reasonable promptness, requesting corrections required thereto to be made. The Bidder will make any corrections required and file with the Architect three corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Bidder of responsibility for deviations from the Plans and Specifications. The Bidder will keep one copy of the contract documents on the site, in good order, available to the Architect. All drawings and specifications will be returned to the Architect upon completion of construction.

Section 4. Samples: The Bidder will furnish for approval, all samples as directed by the Architect, and will perform the work in accordance with such approved samples.

Section 5. Inspection and Tests: The manner of construction of the Project and all materials and equipment used or to be used therein shall be subject to the inspection, tests and approval of the Architect and the

Administrator, and the Bidder will furnish all information required by the Architect or the Administrator concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect all records of the Bidder and of any subcontractor relevant to the work. The Bidder will make available at the site of the Project, telephone service where obtainable, the payroll, invoices of material and other data and records of the Bidder relevant to the work. The Bidder will provide all reasonable facilities necessary for such inspection and tests. If the specifications, the Architect's instructions, laws, ordinances or any public authorities require any work to be specially tested or approved, the Bidder will give the Architect timely notice of its readiness for observation by the Architect or inspection by an authority other than the Architect, and if the inspection is by such other authority, of the date fixed for such inspection, testing or approval. The Bidder will bear all costs of such inspections, tests and approvals unless otherwise provided, obtain required certificates and deliver them to the Architect. Observations by the Architect shall be promptly made, and where practicable at the source of supply. If any work should be covered without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Bidder's expense. Re-examination of questioned work may be ordered by the Architect and if so ordered the work must be uncovered by the Bidder. If such work be found in accordance with the contract documents the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract documents the Bidder will pay such cost.

Section 6. Employees: The Bidder will at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the task assigned him. The Architect and the Owner shall have the right to require the removal from the Project of any employee of the Bidder or subcontractor if in their judgment such removal shall be necessary to protect the interest of the Owner.

Section 7. Defective Workmanship and Materials: Notwithstanding the acceptance of workmanship, materials (except owner-furnished materials) or equipment or the giving of any certificate with respect to the Completion of Construction, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of this Proposal, the workmanship, materials or equipment shall be found to be defective or not in conformity with the requirements of the Plans and Specifications, the Bidder will remedy or replace such workmanship, materials or equipment within thirty (30) days after written notice of the failure of the Bidder to conform with the applicable provisions of the contract documents shall have been given to the Bidder by the Owner.

ARTICLE III—PAYMENT AND RELEASES OF LIENS

Section 1. Payments to Bidder:

(a) On or before the fifth (5) day of each Calendar Month, the Bidder will make application for payment, and the Owner, on or before the fifteenth (15) day of such month, shall make partial payment to the Bidder for construction accomplished during the preceding Calendar Month and partial payment for materials not incorporated in the Project. The payment shall be made on the basis of a schedule of values and receipts or other vouchers, submitted by the Bidder to, and approved by, the Architect, showing payments for labor and materials, payments to subcontractors, and such other evidence of the Bidder's right to payment for construction accomplished, and bills of sale or such other procedure as will establish the Owner's title to materials not incorporated in the Project but delivered and suitably stored on the site or at any other location agreed upon in writing by the Owner. Approval by the Architect of the application for payment is solely for the purposes of payment and shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate of the cost for construction accomplished and approved and fifty percent (50%) of the cost of materials not incorporated in the Project shall be paid by the Owner to the Bidder prior to Completion of Construction. The Bidder will, before the first application, submit to the Architect, a schedule of values of the various parts of the work, including quantities, aggregating the total contract price, divided so as to assist in determining the accuracy of payments to subcontractors and of the applications for payment.

(b) Upon Completion of Construction, the Architect shall inspect the Project, and if he shall find the work acceptable and all provisions hereunder fully performed, he shall furnish the Owner two copies of a Certificate of Completion, on forms satisfactory to the Administrator, and shall certify thereon the final Contract Price. The Certificate of Completion shall show thereon the Acceptance of the Contractor. Upon acceptance of the Certificate of Completion by the Owner, the Owner shall make final payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder, except that, for contracts requiring approval of the Administrator, the Owner shall submit one copy of the Certificate of Completion to the Administrator for approval. Upon notice of approval by the Administrator, the Owner shall make final payment to the Bidder.

(c) Interest at the rate of ____ percent[1] (____ %) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date, provided the delay in payment beyond the due date is not caused by any condition within control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth (15th) day of each Calendar Month provided (1) the Bidder on or before the fifth (5th) day of such month shall have submitted its certified estimate of construction completed during the preceding month and (2) the Architect on or before the fifteenth (15th) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval of the Architect shall not have been given on or before the fifteenth (15th) day of such month, the due date for purposes of this Subsection shall be the fifteenth (15th) day of such month notwithstanding the absence of the Architect's approval of the certification.

(d) Interest at the rate of ____ percent[2] (____%) shall be paid by the Owner to the Bidder on the final payment commencing fifteen (15) days after the due date. The due date for the purposes of such final payment shall be sixty (60) days after the date of certification by the Architect in the Certificate of Completion or the date of approval by the Administrator of the Certificate of Completion when approval thereof is required by the Administrator.

(e) No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal, and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens: Upon Completion of Construction of the Project, but prior to the payment to the Bidder of any amount withheld in accordance with Section 1, (a) of Article III, the Bidder shall furnish the Owner, on forms satisfactory to the Administrator releases of all liens, and of all rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the construction of the Project, and a Certificate of Contractor on a form satisfactory to the Administrator, to the effect that all labor used on or for the Project has been paid and that all such releases have been submitted to the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property: The Bidder will, at all times, take all reasonable precautions for the safety of employees on the Project, and of the public and all other persons who may be affected thereby, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes.

The Bidder will protect from loss or damage all materials and equipment to be incorporated in the Project, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, paved surfaces, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Bidder will provide and maintain guard lights, watchman or other protection for persons and property, and physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the

[1] 1 The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

Associated General Contractors of America, unless such instructions are incompatible with or less strict than those of any public authority having jurisdiction thereon, or instructions of the Architect.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder will at all times, keep the premises free from accumulation of waste material or rubbish caused by his employees or work, and at the completion of construction he will remove all rubbish from and about the Project, and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Project from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, will be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials to be used therein will be borne by the Bidder. The Bidder will make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder, by reason of any act of God or other casualty or cause, whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(c) The Bidder will confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect, and shall not unreasonably encumber the premises with his materials.

(d) The Bidder will not load or permit any of the structure to be loaded with a weight that will endanger its safety.

(e) The Bidder will submit to the Owner, monthly reports in duplicate of all accidents giving such data as may be prescribed by the Architect.

(f) Upon violation by the Bidder of any of the provisions of this section, the Bidder will, after written notice of such violation given to the Bidder by the Architect or the Owner, immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense; provided, however, that the Owner may, if it deems necessary or advisable, correct such violation at the Bidder's expense without such prior notices to the Bidder.

(g) The Bidder will be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the construction of the Project.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Purchase of Materials: The Bidder will purchase all materials (except owner-furnished materials) and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. All materials and supplies shall become the property of the Owner when erected in place or at such earlier time as the parties may agree pursuant to Section 1(a) of Article III. Unless otherwise specified, all materials shall be new.

Section 4. Assignment of Guarantees: The Bidder will obtain from manufacturers, materialmen, and subcontractors and furnish to the Owner all guarantees and will transfer or assign to the Owner such guarantees as run in favor of the Bidder, prior to the time the Bidder receives final payment. The guarantees shall be in addition to and not limited by any other provisions of the contract documents, guarantee or remedy required by law.

Section 5. Royalties and Patent Infringement: The Bidder will pay all royalties and license fees, and will hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment, materials, supplies or construction methods used in the work.

Section 6. Compliance with Statutes and Regulations: The Bidder will comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with The Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 7. Delivery of Possession and Control to Owner: Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least 90 percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of such portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Section 1(b), Article IV hereof with respect to such portion so delivered to the Owner shall be terminated; provided, however, that nothing herein contained shall relieve the

Bidder of any liability with respect to defective workmanship or materials as provided in Section 7, Article II.

Section 8. Occupancy Before Completion: Exception as provided in Section 7, the Owner shall not occupy any portion of the Project prior to the time of completion without the written approval of the Bidder. It is agreed that such occupancy of any such portion of the Project will not constitute acceptance of workmanship or materials used in construction of the Project as provided in Section 7, Article II, and that such occupancy will not relieve the Bidder from his obligation to complete any part of the Project in compliance with the contract. The Owner agrees to permit the Bidder to fulfill the requirements of the contract in accordance with instructions issued to the Bidder by the Architect upon occupancy by the Owner.

ARTICLE V—REMEDIES

Section 1. Liquidated Damages: The time of Completion of Construction of the Project is of the essence of this Contract. Should the Bidder neglect, refuse or fail to complete construction within the time herein agreed upon, after giving effect to extensions of time, if any herein provided for, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due or which may become due and payable to the Bidder, the sum of _____ Dollars ($_____) per day of each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty. If the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deduced or claimed as liquidated damages was computed.

Section 2. Completion on Bidder's Default: If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder, such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall be made by the Bidder or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder and the Bidder and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Proposal and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 3. Cumulative Remedies: Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of Section 1 of this Article V shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions:

(a) The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested in the duties and functions which the Administrator is now authorized by law to perform.

(b) The term *Architect* shall mean the person or organization employed by the Owner to provide architectural services for the Project, and the Architect's duly authorized assistants and representatives. If an Architect is not employed, the term shall apply to the duly authorized agent of the Owner.

(c) The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, and (2) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The date of signature by the Architect of the Certificate of Completion shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Bond or Builder's Risk Policy:

(a) The Bidder will furnish to the Owner, for a contract in an amount in excess of $100,000, a bond in a penal sum not less than the Total Contract Price and in the form attached hereto and with a Surety or Sureties listed by the United States Treasury Department as Acceptable Sureties.

(b) The Bidder will furnish to the Owner for a contract in an amount of $100,000 or less, a Builder's Risk Policy or a bond like that required in the preceding paragraph, whichever the Owner has specified under Paragraph 8 of the Notice and Instructions to Bidders. The Builder's Risk Policy shall be on a completed value form, effective from the date equipment or materials is first delivered to the building site, and shall name both the Owner and the Contractor as insureds. The policy shall insure against loss by fire or lightning and the named perils in the extended coverage endorsement. The amount of coverage shall not be less than the replacement value of the property constructed, including all materials to be used in the construction and stored at the site or at any other location whether furnished by the Owner or the Contractor. When directed, the Bidder shall furnish evidence of compliance with these requirements. The evidence shall be in the form of a certificate of insurance by the insurance company and shall include a provision that no change in or cancellation of the policy shall be made without prior written notice to the Owner and the Administrator.

Section 4. Subcontracts and Nonassignment:

(a) Within ten (10) days after acceptance of the Proposal by the Owner and before awarding any subcontracts, the Bidder will notify the Architect, Owner and Surety in writing, of the names of the subcontractors proposed for the principal parts of the work, and will not enter into any subcontract for such work if written objection thereto is received from the Architect, Owner, Surety or Sureties within fifteen (15) days after receipt of such notice. The Bidder will be as fully responsible to the Owner and the Administrator for the acts and omissions of each subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it. The Bidder will not subcontract on aggregate amount in excess of sixty-five percent (65%) of its obligations, (to be calculated on the basis of the Total Contract Price) without approval of the Architect, Owner, and Surety or Sureties on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. Nothing contained in the Construction Contract shall create any contractual relation between any subcontractor and the Owner.

(b) The Bidder will not assign the contract effected by the acceptance of this Proposal or

any part thereof without approval in writing of the Owner, Surety or Sureties, and the Administrator if the Construction Contract was approved by the Administrator.

Section 5. Equal Opportunity Provisions:

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensue that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As use in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. License: The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7. Extension to Successors and Assigns: Each and all of the covenants and agreements contained in the contract effected by the Acceptance of this Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

Section 8. Description of Contract: The Notice and Instructions to Bidders, the Proposal, the Acceptance, the Contractor's Bond or Builder's Risk Policy, the Plans and Specifications and all amendments or revisions thereto constitute the Construction Contract.

Section 9. Contractor: Upon acceptance of this Proposal the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator: No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within sixty (60) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

_____ Bidder
By _____ President
_____ Address
Attest: _____ Secretary
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the Proposal of _____ for the construction of the Project therein described for the:

Base Bid of _____ and alternate bids as follows (Show plus or minus):
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
The Total Contract Price is $_____

_____ Owner
By _____ President
Attest: _____ Secretary
Dated ____

[End of clause]

§ 1726.330 [Reserved]

§ 1726.331 Bid bond, REA Form 307.

The bond form in this section shall be used when a Bid Bond is required by REA Form 200, 203, 257, 764, 830, or 831.

Bid Bond

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereafter called the "Owner") in the penal sum of ten percent (10%) of the amount of the bid referred to in paragraph 2 below, but not to exceed _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents:

2. Whereas, the Principal has submitted a bid to the Owner for the construction of the Rural Electrification Administration Project known as Project _____.

3. Now, therefore, the condition of this obligation is such that if the Owner shall accept the bid of the Principal, and

(a) the Principal shall execute such contract documents, if any, as may be required by the terms of the bid and give such Contractor's Bond or Bonds for the performance of the contract and for the prompt payment of labor and material furnished for the Project as may be specified in the bid, or

(b) in the event of the failure of the Principal to execute such contract documents, if any, and give such Contractor's Bond or Bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof, between the amount specified in the bid and such larger amount for which the Owner may in good faith contract with another party to construct the Project, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this ____ day of _____, 19____.

Principal _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)
Surety _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)

[End of clause]

§§ 1726.332–1726.339 [Reserved]

§ 1726.340 Substation and switching station erection contract, REA Form 764.

The contract form in this section shall be used when required by this part.

Substation and Switching Station Erection Contract

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project _____ will be received by the Owner on or before ____ o'clock ____ M., 19____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of the following Substations and other Major Facilities:

Name _____ KVA _____
Voltage _____
Name _____ KVA _____
Voltage _____
Name _____ KVA _____
Voltage _____

The Project is located in ____ Counties, in the State of _____ all as more fully described in the Plans, Specifications for Construction, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner Furnished Materials. The unit prices in the Contractor's Proposal should include provisions for Owner Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining and Transferring Documents. The Plans, Specifications for Construction and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____ upon payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications for Construction and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications for Construction and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers.

5. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in, in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications for Construction, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kickback Statute" (48 Stat. 948) and regulations issued pursuant thereto.

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate Designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications for Construction and offered in the Proposals.

9. The time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to

execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Propose, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Rejection of Bids. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in Unit Prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Bidding and Acceptance. If the Project includes more than one substation, bidders may bid on one or more substations. The Owner may award (1) a contract for all of the substations on the basis of the low total bid or, (2) separate contracts for one or more substations based on the low bids for the respective substations.

18. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

19. The Owner represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. Title to the property on which the Project is to be constructed has been obtained.

c. All funds necessary for prompt payment for the construction of the Project will be available.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. hereof.

_____ Owner

By _____

_____, 19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications for Construction and Construction Drawings for the prices hereinafter stated.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page 10) and the Bidder will give a receipt (see page 12) therefore in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page 11) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon Completion of Construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work. Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This

Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications for Construction, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

Section 7. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 8. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 9. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contractor on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 10. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 11. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this Proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above Materials are Located at:

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above Material to be Delivered to:

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Construction.

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications for Construction and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of substations or other major facilities (hereinafter called the "Stations")

corresponding to the numbers or names shown on the maps attached hereto, or if no Stations are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer and with the approval of the Administrator,[1] may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans, Specifications for Construction, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make changes in construction previously installed in the Project by the Bidder as required by the Owner. The compensation for such changes shall be as agreed upon in writing by the Bidder and the Owner prior to commencement of work in connection with such changes.

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications for Construction.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, as agreed upon by the Owner and Bidder prior to the commencement of work.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that portion of the

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case maybe, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer, and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid, provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Station of the Project upon:

(1) Completion of construction of such Station as certified by the Engineer and approved by the Owner and the Administrator;

(2) Submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) Approval by the Owner and the Administrator of the inventory in respect of such Station; and

(4) Submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Station prior to Completion of the Project.

d. Interest at the rate of ____ percent[3] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent[4] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Station thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project (or any Station thereof if the Bidder shall elect to receive payment in full for any Station when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Station and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Station has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. Temporary water, light, power and other utility service shall be arranged for by the Bidder for construction purposes at its own expense.

e. The Bidder shall do all things necessary or expedient to properly protect any and all adjacent lines, highways and any and all property of others from damage, and in the event that any such lines, highways or other property are damaged in the course of construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Station as hereinbefore defined in Article II, Section lc and Article III, Section lc shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Station upon the issuance by the Engineer of a written statement that the Station has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Station to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section If hereof with respect to such Station so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory, to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to

become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder, shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the substations or other major facilities described in the Plans, Specifications for Construction, and Construction Drawings.

e. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section I hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontractor purchase order as the administering agency

may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; or any agreements between the Owner and third parties with respect to any matters incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety and Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator. No acceptance of this Proposal shall become effective until approved in writing by the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Specifications for Construction

Section 1. Scope of Work. The work covered by this Proposal embraces the complete construction of one or more substations or other major facilities as specified in the Acceptance, any omissions or discrepancies notwithstanding. All material furnished by the Bidder shall be new and in conformance with the Specifications for Construction. All construction work shall be done in a thorough and workmanlike manner in accordance with the Plans, Specifications for Construction and Construction Drawings. Deviations from the Plans, Specifications for Construction, and Construction Drawings shall not be permitted except upon the written permission of the Owner given with the approval of the Administrator.

This contract does not include _____ which is to be done by others.

Section 2. Materials. It is the intent of these specifications that insofar as materials required are included in the Rural Electrification Administration "List of Materials Acceptable for use on Systems of REA Electrification Borrowers," such materials only shall be used. In the event that any materials are required beyond the scope of the "List of Materials Acceptable for use on Systems of REA Electrification Borrowers," specifications for such materials will be included on the drawings or in a supplement to these specifications.

Section 3. Drawings. The Drawings and Specifications collectively, show the specifications of the material and equipment shown thereon, and include schedules of conduit, cable and other items not readily ascertained from the picture drawings. Such schedules show the quantities, sizes, types and other pertinent information; method of installation, and construction details are indicated clearly. The drawings and specifications in the attached List of Drawings are made a part of these contract Specifications.

Section 4. Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation or switching station as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation shall be shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each station should contain adequate identification of the Construction Units under which the material is to be installed and should show what items of material may be partly or entirely found in the lists of owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A. Each Construction Unit shall be designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment shall carry the same Construction Unit designation in all the stations. Items of equipment designated by the same Construction Unit in one station shall be of only one kind as to voltage, type and other specifications. The bid sheet for each station shall be prepared separately from other stations and shall contain all unit prices for Construction Units contained in the station. It is intended that in all cases the "Name and Description of Construction Unit" column of the Bid Sheets shall contain sufficient information to identify the Construction Unit.

Additional description to one or more of the Groups may be provided by the Engineer if deemed necessary to clarify the intent of these Specifications for Construction.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the station, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-Pole Group Operated Air Break Switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning Arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single Pole Disconnecting Switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil Circuit Reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, Relays and Instrument Transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage Regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and Supervisory Control Equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and Cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site Preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station Grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups. Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ STATION CONSTRUCTION UNITS

Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following substations or other major facilities:

_____ Substation, $_____
_____ $_____
The total contract price is $_____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.341 Electric system communications and control equipment contract, REA Form 786.

The contract form in this section shall be used when required by this part.

Electric System Communications and Control Equipment Contract (Including Installation)

Proposal to Furnish, Deliver, and Install Equipment and Materials

To: _____ (hereinafter called the "Purchaser")

The undersigned (hereinafter called the "Seller") hereby proposes to furnish, deliver, install, align and test the equipment and materials, (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto identified as _____ and made a part hereof, and other Attachments identified as _____ and made a part hereof, for the electric system designated _____, financed in whole or in part by a loan to the Purchaser by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

The Seller has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the delivery and installation of the Equipment and has become acquainted with the labor conditions which would affect the work as well as the ecological and environmental criteria to be followed.

The Seller agrees that if its Proposal is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Seller has made any change in the form of Proposal furnished by the Purchaser, the Seller understands that the Purchaser and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration.

ARTICLE I

Section 1. Proposal Price. The Seller will furnish, deliver, install, align and test the Equipment described in the Specifications for the following sum:

Total Contract Price $_____
Delivery time is _____ calendar days.
Completion time is _____ calendar days.

A detailed price breakdown by locations, showing equipment pricing and installation pricing, is given in the Attachment identified as _____ and made a part hereof.

Section 2. Changes. The Purchaser, subject to the approval of the Administrator,[1] may from time to time during the performance of the work make such changes, additions to or subtractions from the Specification's which are part of the Proposal as conditions may warrant; provided, however, that, if any change in the work shall require an extension of time, a reasonable extension will be granted if the Seller shall make a written request therefor to the purchaser within ten (10) days after any such change is made and, provided further, that, if the cost to the Seller shall be increased or decreased by any such change or addition, the contract price shall be increased or decreased by the reasonable cost thereof, in accordance with a contract amendment signed by the Purchaser and the Seller and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Seller shall have made a written request therefor to the Purchaser prior to the commencement of work in connection with such change or addition.

Section 3. Taxes. The prices herein set forth do not include any sums which are or may be payable by the Seller or the Purchaser on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment or labor of installation. If any such tax is applicable, the amount thereof shall be stated separately and added to the Proposal price and paid by the Purchaser.

ARTICLE II—DELIVERY AND INSTALLATION

Section 1. Time of Completion. The time of delivery of the Equipment and of completion of the work is of the essence of this Contract. The seller will deliver the Equipment within the number of calendar days specified in Article I, Section 1, after the Administrator shall have approved this contract in writing and will prosecute diligently and complete the work within the number of calendar days specified in Article I, Section 1, after such approval. The time for such delivery and completion shall be

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Purchaser with respect to matters for which the Purchaser is solely responsible; provided, however, that no delay in such time for delivery or completion of the work or in the progress of the work shall result in any liability on the part of the Purchaser, and provided further that any claim for extension of time shall be adjusted at the time any such delay occurs or any such change is made.

Section 2. Supervision and Inspection. The Seller will give adequate supervision to the work. He will carefully study and compare all drawings, specifications, and other instructions and will at once report to the Purchaser any error, inconsistency or omission which he may discover. The Seller will keep on his work during its progress a competent superintendent and any necessary assistants, all satisfactory to the Purchaser. The Superintendent shall represent the Seller in his absence and all directions given to him shall be as binding as if given to the Seller. When requested, such directions shall be confirmed in writing.

Section 3. The Purchaser will make available during installation a competent representative to coordinate installation activities with the Seller.

Section 4. Alignment, Inspection and Tests. The Seller shall adjust and align the Equipment to perform in accordance with the Specifications and furnish in writing to the Purchaser data to show the state of adjustment of the Equipment. Immediately upon completion of the installation and alignment of the Equipment the Seller shall provide the necessary test equipment and perform the inspections and tests specified in the Specifications under the direct supervision of the Purchaser or its Engineer. A competent representative of the Purchaser or his Engineer will be available to supervise and witness these tests immediately upon completion of installation and alignment by the Seller and to determine for the purchaser that the performance of the equipment meets the Specifications. Such determination, however, shall not preclude subsequent rejection pursuant to Section 7 of this Article II. The Seller shall furnish in writing to the Purchaser the results of all tests. All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator. The Purchaser and the Administrator shall have the right to inspect all records of the Seller and of any subcontractor relevant to the installation work. The Seller shall provide all reasonable facilities necessary for such inspection and tests.

Section 5. If as a result of the tests and measurements set forth in Section 4 above, the Performance Specifications of the Equipment cannot be met due to inaccuracies, or inadequacies in the system data provided in the Specifications, the Purchaser and Seller shall determine what corrective measures are necessary and whether these corrections shall be made by the Purchaser or the Seller.

If it is determined that the Seller shall make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator[3], for such reasonable additional expenses for the corrections, realignment and retesting the Seller is required to perform pursuant to this amendment.

Where it is determined that the Purchaser will make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator[4], for such reasonable additional expenses for realignment and retesting the Seller is required to perform pursuant to this amendment, including, if necessary, the added expense of returning to the project, where necessary, for reperforming alignment and testing.

Section 6. Employees. The Purchaser shall have the right to require the removal from the work of any employee of the Seller if in the judgment of the Purchaser such removal shall be necessary in order to protect the interest of the Purchaser.

Section 7. Defective Workmanship and Materials. Notwithstanding the acceptance of workmanship, materials or equipment or the giving of any certificate with respect to the Completion of the Work, if during performance hereunder or within one year after completion or within such longer period as the Equipment or any part thereof may be guaranteed by the Seller and Manufacturer, the workmanship, materials or equipment, except as may be otherwise provided in the Specifications, shall be found to be defective or not in conformity with the Specifications, the Seller shall remedy or replace at its expense such workmanship, materials or equipment within thirty (30) days after notice of the existence thereof shall have been given to the Seller by the Purchaser.

ARTICLE III—PAYMENTS AND RELEASES OF LIENS

Section 1. Payment to Seller.

(a) The Purchaser shall pay the Seller upon the basis of estimates by the Seller recommended by the supervising engineer, if any, and approved by the Purchaser of the work completed, the following percentages of the price of the equipment for each location set forth in Article I, Section 1, as and if revised: 45% when 50% of the equipment for each location has been delivered at the site of the Project; 90% when all the equipment for each location has been delivered at the site of the Project.

(b) Upon completion of installation of the equipment for each location, the Purchaser shall pay the Seller 90% of the Total price for such location.

(c) Upon Completion of the Installation of the Equipment, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the supervising engineer, if any, of the Purchaser or the Purchaser shall inspect the work performed hereunder and if the work shall be found acceptable and all provisions hereunder fully performed, the supervising engineer, if any, of the Purchaser shall certify as to that fact and as to the amount of the balance found to be due to the Seller. Upon acceptance by the Purchaser, the Purchaser shall pay to the Seller all unpaid amounts to which the Seller shall be entitled hereunder; provided, however, such final payments shall be made not later than 120 days after completion of the work, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 2. Release of Liens. Upon the Completion of the Installation of the Equipment by the Seller, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the Seller will deliver to the Purchaser, in duplicate, releases of all liens and of rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the work and a certificate by the Seller in a form approved by the Administrator, to the effect that all labor has been paid and that all such releases have been submitted to the Purchaser for approval.

In lieu of releases of liens, and if the Administrator shall so approve, the Seller may deliver to the Purchaser, in duplicate, (1) a certificate, in a form approved by the Administrator, that all manufacturers, materialmen and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Purchaser harmless against any liens arising out of the Seller's performance hereunder which may have been or may, be filed against the Purchaser.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE SELLER

Section 1. Protection to Persons and Property. At all times when Equipment is being delivered and installed the Seller will exercise reasonable precautions for the safety of employees on the work and of the public, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machine and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Seller will at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work, and at the completion of the work he will remove all rubbish and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Seller will perform work in such manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There will be no depositing of trash in streams or waterways. Herbicides, other chemicals or their containers will not be deposited in or near streams, waterways or pastures. The Seller will follow, under the general direction of the Purchaser, the

[3] See Footnote 1.

[4] See Footnote 1.

criteria relating to environmental protection as specified herein by the Purchaser.

(c) The work, from its commencement to completion, or to such earlier date or dates when the Purchaser may take possession and control, shall be under the charge and control of the Seller and during such period of control by the Seller all risks in connection therewith and the materials to be used therein, whether owned by the Seller or Purchaser, shall be borne by the Seller. The Seller will make good and fully repair all injuries and damages to the work or any portion thereof under the control of the Seller by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Seller's negligence.

(i) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Seller's employees) and loss, damage to or destruction of Purchaser's property or the property of any other person or entity (including but not limited to Seller's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Seller, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Seller liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Purchaser.

(ii) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all liens and claims filed or asserted against Purchaser, its directors, officers, and employees, or Purchaser's property or facilities, for services performed or materials or equipment furnished by Seller, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Seller shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Purchaser promptly when it has done so. If Seller does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Purchaser shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Seller.

(iii) Seller shall provide to Purchaser's satisfaction evidence of Seller's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) Monthly reports of all accidents will be promptly submitted by the Seller, giving such data as may be prescribed by the Purchaser.

Section 2. Delivery of Possession and Control to Purchaser. Upon written request of the Purchaser, the Seller shall deliver to the Purchaser full possession and control of any completed location included in the work, provided the Seller shall have been paid at least 90% of such Total Location Price. Upon such delivery of the possession and control of any such location to the Purchaser, the risks and obligations of the Seller, as set forth in Article IV, Section 1(b) hereof, with respect to such location shall be terminated; provided however, that nothing herein contained shall relieve the Seller of any liability with respect to defective workmanship or materials as specified in Article II, Section 7, hereof.

Section 3. Insurance. The Seller shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Seller shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 4. Purchase of Materials. The Seller shall purchase all materials and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the Seller any right, title or interest therein. Materials and Supplies shall become the property of the Purchaser as the Purchaser makes payments therefor to the Seller in accordance with Article III, Section 1(a). Unless otherwise specified, all materials shall be new.

Section 5. Assignment of Guarantees. All guaranties of materials and workmanship running in favor of the Seller shall be transferred and assigned to the Purchaser on completion of the work and at such time as the Seller receives final payment.

Section 6. Patent Infringement. The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment, materials, supplies, or installation methods used in the work. The Seller shall, at its own cost (and Purchaser agrees to permit Seller to do so) defend any suits which may be instituted by any party against the Seller for alleged infringement of patents relating to the Seller's performance hereunder.

Section 7. Compliance with Statutes and Regulations. The Seller shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Seller acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statutes (48 Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287,1001 as amended and the Seller agrees to comply with the provisions of all of such statutes and regulations.

ARTICLE V—REMEDIES

Section 1. Completion on Seller's Default. If default shall be made by the Seller or by any subcontractor in the performance of any of the work hereunder, the Purchaser, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Seller and the Surety or sureties upon the Seller's Bond or Bonds, if any, a written notice requiring the Seller to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Seller such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Purchaser and the Administrator, shall be made by the Seller or its surety or sureties, the Purchaser may take over the performance of the Seller's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Seller, and the Seller and its surety or sureties shall be liable to the Purchaser for any cost or expense in excess of the contract price occasioned thereby. In such event, the purchaser may take possession of and utilize, in completing the work, any tools, supplies, equipment, appliances and plant belonging to the Seller which may be situated at the site of the installation work. The Purchaser, in such contingency, may exercise any rights, claims or demands which the Seller may have against third persons in connection herewith and for such purpose the Seller does hereby assign, transfer and set over unto the Purchaser all such rights, claims and demands.

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Purchaser exercise any right or enforce any remedy which the Purchaser may exercise or enforce hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Purchaser or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The contract documents shall consist of the Proposal and Acceptance, the Contractor's Bond and the Specifications.

(b) The term "Completion of Installation" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof, except that it shall not include the final acceptance tests nor performance of the Seller's obligations in respect of (i) releases of liens and Certificate of Seller under Article III, Section 2 hereof, (ii) other final documents. The term "Completion of the Work" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the supervising engineer and approved by the Purchaser or signed by the Purchaser, if the Purchaser shall not employ an Engineer, and approved in writing by the Administrator within a reasonable time after completion shall be conclusive evidence as to the fact of completion and the date thereof.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Equal Opportunity Provisions.

(a) Seller's Representations.

The Seller represents that: It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Seller agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Seller agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000 the Seller will file such report, as required by law, and notify the Purchaser in writing of such filing prior to the Purchaser's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Seller will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 21, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Seller's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and the Seller may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Seller certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Seller agrees that (except where it has obtained identical certificates from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 4. Bond. The Seller will furnish to the Purchaser, for a contract in excess of $100,000 a bond in a penal sum not less than the Proposal price and in the form attached hereto and with a Surety or Sureties listed by the United States Treasury Department as acceptable Sureties.

Section 5. License. The Seller shall comply with all applicable construction codes.

(a) The Seller warrants that he possesses contractor's license number _____ issued to him by the State of _____ in which the work is located, and said license expires on _____, 19____.

(b) The Seller warrants that no license is required in the State in which the work is located.

(Cross out that subsection which does not apply.)

Section 6. Nonassignment of Contract. The Seller will not assign the Contract effected by acceptance of this Proposal, or any part thereof, or enter into any contract with any person, firm or corporation, for the performance of the Seller's obligations hereunder or any part hereof, without the approval in writing of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any; provided, however, the Seller may subcontract the whole or any part of the installation work to be performed at the installation site (as distinguished from furnishing and delivery of equipment and materials). If the Seller, with the consent of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any, shall enter into any subcontract with any subcontractor for the Performance of any part of the installation work to be performed at the installation site, the Seller shall be as fully responsible to the Purchaser and the United States of America for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Seller would be for its own acts and omissions and those of persons directly employed by it.

Section 7. Approval of the Administrator. The acceptance of this Proposal by the Purchaser shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date of the Proposal.

_____ Seller

By _____

_____ Title

Date of Proposal _____

(If executed by one other than President, Vice-President, a partner or the individual owner, a power of attorney authorizing execution should accompany this proposal.)

Acceptance

Subject to the approval of the Administrator, the Purchaser hereby accepts the Proposal of _____ (Dated _____) for the Equipment herein described for the Total Base Price of $_____ and the following options for:

Spare Parts $_____

Maintenance Tools $_____

Test Equipment $_____

Other Options: (Describe) $_____

TOTAL CONTRACT PRICE $_____

_____ Purchaser

By _____ President

ATTEST _____ Secretary

Date of Acceptance _____

[End of clause]

§ 1726.342 Distribution line extension construction contract (labor and materials), REA Form 790.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor and Materials)

Proposal

To: _____ (hereinafter called the "Owner").

ARTICLE I—GENERAL

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish labor, materials, and equipment for, and construct for the prices hereinafter stated, the rural electric project _____, 19_____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least _____ dollars ($ _____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the owner and the Contractor may enter into negotiations for the performance of work at prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation.

The unit labor prices herein set forth are applicable to work performed on unenergized lines. Such unit labor prices shall be increased by _____ (_____) percent for all units installed on energized lines in accordance with instructions of the Owner, as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in:

REA Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials and with the labor conditions which would affect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is _____ is not _____ required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19_____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis:

The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal. No payment shall be made to the contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Section 9—Materials and Equipment. The Contractor agrees to furnish and use in the construction of the Project under this Proposal, only such materials and equipment as are included on the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to construction.

The Contractor further agrees to furnish and use guy wire with ASTM Class _____ (Owner to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using _____ (Owner to insert stranded soft drawn copper or aluminum alloy) conductor.

All conductor ties on insulators shall be of the materials and methods shown in the following Type Guide Drawings: _____ (Owner to insert appropriate drawing numbers.)

Ground rods and butt-type grounding plates shall be _____. (Owner to insert galvanized steel or copper.)

Underground primary cables shall have _____ coated copper neutral (Owner to insert round or flat.)

The Contractor further agrees to furnish poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Owner to insert Douglas Fir or Southern Yellow Pine), treated with _____ (Owner to insert type of preservative.)

The Contractor agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection or insured warranty. The Contractor further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivery timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 10—Owner-Furnished Materials.

a. The Contractor understands and agrees that the Owner may, with approval of the Contractor, furnish to the Contractor some of the materials and equipment required for construction of the Project, (hereinafter called "Owner-Furnished Materials"). The quantity, type, and value of Owner-Furnished Materials for each Section shall be as agreed upon by the Contractor and Owner prior to the start of construction of each Section of the Project. The Owner shall make such materials and equipment available to the Contractor as provided in Article II, Section 1, b, and the Contractor will give to the Owner a receipt in such form as the Owner shall approve.

b. The value of the completed Construction Units certified to by the Contractor each month pursuant to Article III, Section 1, a, of this Proposal shall be reduced by an amount equal to the value of the Owner-Furnished Materials installed by the Contractor during the preceding month. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Section. Owner-Furnished Materials, if any, not required for the Section, shall be returned to the Owner by the Contractor upon Completion of Construction of the Section. The value of all Owner-Furnished Materials not installed in the Section of the Project or returned to the Owner shall be deducted from the final payment to the Contractor for the Section.

Section 11—References to Materials. The references in this Proposal to "Materials", except in Article IV, Section 1.f, shall be understood to mean only materials to be furnished by the Contractor.

Section 12—Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Contractor or the Owner in connection with construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment to be incorporated in the Project as part of such Construction Units. The Contractor agrees to pay all such taxes except on Owner-Furnished Materials and it is understood that, as to Owner-Furnished Materials, the values as agreed to by the Owner and Contractor for such materials include such taxes, if applicable. The Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to materials used on construction of the Project except as to Owner-Furnished Materials.

ARTICLE II—CONSTRUCTION

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of the acceptance of the Proposal. The Contractor agrees to commence construction of a Section within _____ (_____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list including appropriate Unit prices, of the Owner-Furnished Materials to be used in the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at _____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion; provided, however, that the required completion time for any Section shall not be less than _____ (_____) days or _____ (_____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any.

The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgement of the Owner snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection.

a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee

of the Contractor if in the judgement of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Contractor. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Contractor shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Contractor shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Contractor shall deenergize that section of the Project involved in such work. In the event of failure by the Contractor to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Contractor shall pay to the Owner the cost and expense thereof.

Section 5—Materials Removed. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor.

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of one year following acceptance of this Proposal by the Owner.

ARTICLE III—PAYMENT

Section 1—Payments to Contractor.

a. Within the first fifteen (15), days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is _____ dollars ($_____). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of 90 percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and all manufacturers, materialmen, and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1—Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II, Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction

of the Project, the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor to do so the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy of policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article II, Section 4.

Section 5—Purchase of Materials. The Contractor shall purchase all materials and supplies outright and not subject to any conditional sales agreement, bailment lease, or other agreement reserving to the seller any right, title, or interest therein. All materials and supplies shall become the property of the Owner when erected in place.

Section 6—Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on Completion of Construction and at such times as the Contractor receives final payment.

ARTICLE V—REMEDIES

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

ARTICLE VI—MISCELLANEOUS

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Contractor agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287,1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

a. Contractor's Representations.

The Contractor represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964. The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other

storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6—Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossings or any other matter incident to the construction and operation of the Project.

Section 7—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8—Definitions.

a. The term *Owner* shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal.

b. The term *Completion of Construction* shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, Section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 1a hereof.

c. The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 9—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 25–6 means a pole 25 feet long, class 6.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure ____; 2. Thermal process: ____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Owner to complete above)

Unit no.	Unit price		
	Labor	Materials	Labor and materials

Section A—Single Phase Pole Top Assembly Units

Section B—V Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x1/8 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
A			
B			

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x1/8 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
C			

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
D			

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
E			

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
F			

Section G—Transformer Assembly Units

A transformer assembly unit consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the pole top, secondary, service, or grounding assemblies.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
G			

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
J			

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
K			

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respective drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
M			

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-way, as designated by the Owner, shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Unit price		
	Labor	Materials	Labor and materials
R	.....		

Section S—Substation Assembly Units

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
S			

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner.[1,2]) In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[3]) The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____. (Owner to insert Owner or Contractor).

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UD			

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place. This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching. For submersible transformers, it includes the cable terminations, the enclosure and cover.

[1] _____Owner check here if primary splices are permitted:

[2] _____Owner check here if secondary and service splices are permitted.

[3] _____Owner check here if 12 feet of service conductor is to be left as a coil three feet from the building with ends capped instead of connection to meter box.

drainable material (when specified [4]), and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UG			

Section UK—Underground Secondary and Service Assembly Units

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UK			

Section UM—Miscellaneous Underground Assembly Units

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad in place.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UM			

Section UR—Underground Excavation Assembly Units

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D)3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measure parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required. **Note:** Where in the judgement of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a two-inch bed of clean and or soil placed in the trench under the cable and a four-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UR			

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line

[4] _____Owner check here if drainable material is specified.

changes involve three types of assembly units as follows:

Section H—Conversion assembly units;
Section I—Removal assembly units;
Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New Construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines. The Contractor will so plan and perform its work that it will be possible to safely reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

Section H—Conversion Assembly Units

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner.

Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pintype insulator, single upset bolt and neutral spool and furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under Section I and the new conductor installed under Section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under Section I and the new pole and pole-top assembly will be installed according to Section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit:

Unit	Description

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

SUBSECTION H (C–A) 1 PHASE TO 3 PHASE

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

SUBSECTION H (C–B) V PHASE TO 3 PHASE

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

Section I—Removal Assembly Units

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner. All materials removed remain the property of the Owner. The provisions for Owner-Furnished materials in the Proposal shall apply if such materials are reused for construction of the Project.

The unit removal prices shall include all materials and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus I–G Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary Units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service Unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price
I	

Section N—New Assembly Units

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Unit No.	Unit price		
	Labor	Materials	Labor and materials
N			

Acceptance

The undersigned hereby accepts the foregoing Proposal of _____, dated _____, to construct the rural electric Project _____ 19____ Line Extensions.

_____ (Owner)

By

_____ (President)

_____ Secretary

_____ Date of Contract

[End of clause]

§ 1726.343 Distribution line extension construction contract (labor only), REA Form 792.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor Only)

Proposal

To: _____ (hereinafter called the "Owner").

Article I—General

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to construct for the prices hereinafter stated, with materials furnished by the Owner, the rural electric project _____ 19 ____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least _____ dollars ($ _____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the Owner and the Contractor may enter into negotiations for the performance of work at labor prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner, may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation. The unit prices herein set forth are applicable to work performed on unenergized lines. Such unit prices shall be increased by _____ (_____) percent for all units installed on energized lines in accordance with instructions of the Owner, as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in:

REA Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials to be furnished by the Owner and with the labor conditions which would affect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is _____ is not _____ required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis:

The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal.

No payment shall be made to the Contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Article II—Construction

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of acceptance of the Proposal. The Contractor agrees to commence construction of a Section within _____ (_____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list of the materials required for the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at _____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion; provided, however, that the required completion time for any Section shall not be less than _____ (_____) days or _____ (_____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any.

The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Owner snow, rain, or wind or the results of snow, rain, or frost make it impracticable to perform any operations of construction; provided further that the contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a written request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection.

a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of performance of the work, and all equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Workmanship. The acceptance of any workmanship by the Owner shall not preclude the subsequent rejection thereof if such workmanship shall be found to be defective after installation, and any such workmanship found defective before final acceptance of the work or within one (1) year after completion shall be remedied or replaced, as the case may be, by and at the expense of the Contractor. In the event of failure by the Contractor so to do, the Owner may remedy such defective workmanship and in such event the Contractor shall pay to the Owner the cost and expense thereof. The Contractor shall not be entitled to any payment hereunder so long as any defective workmanship, in respect of the Project, of which the Contractor shall have had notice, shall not have been remedied or replaced, as the case may be.

Section 5—Materials. At or prior to the commencement of construction of each Section, the Owner shall make available to the Contractor all materials for such Section which the Owner has on hand, and from time to time as such additional deliveries of materials, if any, are received by the Owner, the Owner shall make such materials available to the Contractor: Provided, however, that the Contractor or his authorized representative will give to the Owner a receipt in such form as the Owner shall approve for all materials furnished by the Owner to the Contractor. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor.

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of 1 year following acceptance of this Proposal by the Owner.

ARTICLE III—PAYMENT

Section 1—Payments to Contractor.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of

completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is _____ dollars ($_____). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the Completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of ninety percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II, Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction of the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received

from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy of policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shal at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article 11, Section 4.

ARTICLE V—REMEDIES

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

ARTICLE VI—MISCELLANEOUS

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 3—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 4. Equal Opportunity Provisions.

a. Contractor's Representations.

The Contractor represents that: It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24,1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas; transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 5—Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossing or any other matter incident to the construction and operation of the Project.

Section 6—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 7—Definitions.

a. The term *Owner* shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal.

b. The term *Completion of Construction* shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 1a hereof.

c. The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 8—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

SECTION 1—POLE UNITS

A pole unit consists of the installation of one pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 25–6 means a pole 25 feet long, class 6.)

Unit No.	Unit labor price

POLE TOP ASSEMBLY UNITS

A pole top assembly unit consists of the installation of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors.

SECTION A—1 PHASE

Unit No.	Unit labor price

SECTION B—V PHASE

Unit No.	Unit labor price

SECTION C—3 PHASE

Unit No.	Unit labor price

SECTION D—CONDUCTOR

A conductor assembly unit consists of the installation of 1,000 feet of conductor or cable for primaries, secondaries or services. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stales shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Unit labor price

SECTION E—GUY ASSEMBLY UNITS

A guy assembly unit consists of the installation of the hardware and wire, and guy insulator where necessary. An overhead guy assembly unit does not include the associated pole and down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit labor price

SECTION F—ANCHOR ASSEMBLY UNITS

An anchor assembly unit consists of the installation of an anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit labor price

SECTION G—TRANSFORMER ASSEMBLY UNITS

A transformer assembly unit consists of the installation of the transformer, its protective equipment and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the installation of the pole top, secondary, service, or grounding assemblies.

Unit No.	Unit labor price

SECTION J—SECONDARY ASSEMBLY UNITS

A secondary assembly unit consists of the installation of the hardware, insulators, etc., to support the secondary conductor or cable. It does not include the installation of the secondary conductor or cable, or of any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit labor price

SECTION K—SERVICE ASSEMBLY UNITS

A service assembly unit consists of the installation of the hardware, insulators, etc. to support the service conductors or cable. It does not include the installation of the service conductor or cable, or of any hardware, insulators etc. required to support secondary conductors or cable.

Unit No.	Unit labor price

SECTION M—MISCELLANEOUS ASSEMBLY UNITS

A miscellaneous assembly unit consists of the installation of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes the installation of grounding assemblies, fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit labor price

SECTION R—RIGHT-OF-WAY CLEARING UNITS

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors.

This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-ways as designated by the Owner shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____.

Unit No.	Unit labor price

SECTION S—SUBSTATION ASSEMBLY UNITS

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit labor price

SECTION UD—UNDERGROUND CABLE ASSEMBLY UNITS

An underground cable assembly unit consists of the installation of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the labor for the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and the labor for making all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner[1,2].) In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed includes all installation of cable in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[3] The conductor or cables

[1] _____ Owner check here if primary splices are permitted.

[2] _____ Owner check here if secondary and service splices are permitted.

[3] _____ Owner check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box.

listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____ (Owner to insert Owner or Contractor).

Unit No.	Unit labor price

SECTION UG—UNDERGROUND TRANSFORMER ASSEMBLY UNITS

An underground transformer assembly unit consists of the installation of the transformer, its housing, warning sign, switches, overcurrent protective devices, grounding loop, and its hardware and leads with their connectors and supporting insulators. This unit also includes the installation of primary cable terminations but not of lightning arresters, fault indicators or ground rods, nor does it include any trenching. For pad-mount transformers, it does not include installation of the pad, drainable material, backfilling, compaction, or site preparation which are included in the pad assembly units. For submersible transformers it includes the installation of cable terminations, of the enclosure and cover, of drainable material (when specified)[4] and the excavation.

Unit No.	Unit labor price

SECTION UK—UNDERGROUND SECONDARY AND SERVICE ASSEMBLY UNITS

An underground secondary and service assembly unit consists of the installation of the secondary or service cable terminal housing. It includes the installation of the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the installation of the cable terminations, ground rod, or pad, when required.

Unit No.	Unit labor price

SECTION UM—MISCELLANEOUS UNDERGROUND ASSEMBLY UNITS

A miscellaneous underground assembly unit consists of the installation of an additional unit needed in the Project for new construction, but not otherwise listed in the Proposal. This section includes the installation of the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include the installation of a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the installation of the stress cone, and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the installation of the bedding, drainable material (when specified), cable slot, and site preparation, backfilling and tamping.

Unit No.	Unit labor price

SECTION UR—UNDERGROUND EXCAVATION ASSEMBLY UNITS

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D) 3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of the installation of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of the installation of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. The installation of underground cable in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may

[4] _____ Owner check here if drainable material is specified.

be used where the permanent installation of a steel pipe under the UR–5 unit is not required. The installation of underground cable in the pipe is not included in this unit.

Unit No.	Unit labor price

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units;

Section I—Removal assembly units;

Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New Construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines. The Contractor will so plan and perform its work that it will be possible to safely reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

SECTION H—CONVERSION ASSEMBLY UNITS

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner.

Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pin-type insulator, single upset bolt and neutral spool and installs the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator supplied by the Owner required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under section I and the new conductor installed under section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under section I and the new pole and pole-top assembly will be installed according to section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit:

Unit	Description

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Unit labor price

Subsection H (C–A) 1 Phase to 3 Phase

Unit No.	Unit labor price

Subsection H (C–B) V Phase to 3 Phase

Unit No.	Unit labor price

SECTION I—REMOVAL ASSEMBLY UNITS

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner.

The unit removal prices shall include all labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience. The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the Specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus, I–G Conventional signifies the removal of a

conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the Specifications.

h. Service unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price

SECTION N—NEW ASSEMBLY UNITS

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price

Acceptance

The undersigned hereby accepts the foregoing Proposal of ____, dated ____, to construct the rural electric Project ____19____ Line Extensions.

____ (Owner)

By ____ President

____ Secretary

____ Date of Contract

[End of clause]

§ 1726.344 [Reserved].

§ 1726.345 Certificate of contractor and indemnity agreement (line extensions), REA Form 792b.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor and Indemnity Agreement (Line Extensions)

_____, certifies that he is the _____ (title or designation), of _____ (name of contractor), the Contractor, in a contract dated _____ 19_____ entered into between the Contractor and _____ (name of REA Borrower) _____, the Owner, for the construction of a rural electric Project (hereinafter referred to as Project), which bears the Project Designation _____ 19_____ Line Extensions, and that he is authorized to and does make this Certificate and Indemnity Agreement on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of the said contract.

Undersigned further says that all persons who have furnished labor in connection with the Section of the Project represented by the Final Inventory dated _____, in the amount of $_____, have been paid in full; that all manufacturers, materialmen and subcontractors which furnished any materials or services, or both, for the said Section of the Project have been paid in full; that no lien has been filed against the Project and no person has any right to claim any lien against the Project.

Undersigned further says that if the Owner pays the Contractor the contract price for the said Section of the Project the Contractor will indemnify and hold harmless and does hereby undertake and agree to indemnity and hold harmless the Owner from any claim or lien arising out of the negligence or other fault of the Contractor in respect of the performance of the contract which may have been or may be filed against the Owner.

_____ Signature of Contractor (President, Vice-President, Partner or Owner, or, if signed by other than one of foregoing, Power of Attorney signed by one of the foregoing should be attached. Indicate applicable designation.)

[End of clause]

§ 1726.346 Supplemental contract for additional project, REA Form 792c.

The form in this section shall be used when required by REA Form 201, 790, or 792.

Supplemental Contract for Additional Project

Date _____

TO: _____ Contractor

Pursuant to Article I, Section 2 of the Contractor's Proposal dated _____, for the rural electric Project _____, we request that you construct Additional Project No. _____, consisting of approximately the following system improvement and line extension work: _____.

The Additional Project is to be constructed in accordance with all of the provisions of the Contractor's Proposal, except:

1. The time for completion of the Additional Project shall be _____.

2. The prices for Construction Units for the Additional Project are attached.

Please indicate your acceptance of the foregoing by signing below, return two signed copies and retain one copy.

Sincerely,

_____ Owner

By _____ President, Vice President (strike out inapplicable designation.)

ACCEPTANCE:

_____ Contractor

By _____ President, Vice President, Partner (strike out inapplicable designation.)

Date _____

[End of clause]

§§ 1726.347—1726.349 [Reserved].

§ 1726.350 Construction contract amendment for payment, REA Form 800.

The amendment form in this section shall be used when required by this part.

Construction Contract Amendment for Payment

DATE: _____

_____ (Owner)

_____ (Address)

Project: _____

You are requested to amend the Construction Contract between the undersigned Contractor and you, as Owner, dated _____ for the above Project, so that, notwithstanding any provision of the Construction Contract to the contrary, the Owner shall make payment to the Contractor of ninety (90%) percent of the invoice cost to the Contractor of the following equipment or materials delivered to the site of the Project but not installed:

Item of equipment or materials	No. of items	Invoice price		
		Per item	Extended price	
			Total	90%

Total Amount of Amendment _____

A. The Contractor warrants that the above equipment and materials are:

1. Actually on the site of the Project and will remain thereon until installed in the Project.

2. To be incorporated into the Project not sooner than sixty (60) days after the date of this request.

3. In conformance with specifications and not in excess of the quantity required for the Project.

4. Properly stored and protected from weather, theft and other hazards.

5. Capable of being easily inventoried as to the original quantity as well as the quantity remaining each month.

B. The Contractor agrees to furnish to the Owner releases of liens properly executed by

suppliers for the delivered equipment and materials upon which payment is being made.

C. If the Owner accepts and the Administrator approves this Amendment, the Owner agrees to make payment to the Contractor within thirty (30) days after such approval by the Administrator, provided the Contractor shall have theretofore furnished to the Owner the releases of liens required pursuant to Section B of this Amendment. There shall be deducted, on account of such payment, from any amount which may be due the Contractor pursuant to estimates computed in accordance with the provisions of Article III, section 1 (a) of the Construction Contract an amount equal to the invoice cost to the Contractor of equipment and materials paid for pursuant to this Amendment and installed by the Contractor during the period to which the estimate relates.

D. Upon the making of payment hereunder, the title to the equipment and materials in respect of which payment is made shall pass to the Owner, but the risk of loss shall be borne by the Contractor until completion of construction as provided in Article IV, Section I of the Construction Contract.

Sincerely yours,

Contractor: _____
By: _____
Agreed to: _____ (Surety)
By: _____ (Attorney in Fact)
Date: _____

Accepted subject to the approval of the Administrator:
Owner: _____
By: _____ (President)
Date: _____

[End of clause]

§ 1726.351 Electric system construction contract (labor and materials), REA Form 830.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric System Construction Contract (Labor and Materials)

Notice And Instructions To Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as _____ Project will be received by the Owner on or before _____ o'clock _____ M., _____, 19_____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Overhead Distribution Line Construction
_____ miles of _____ kV Single Phase Lines
_____ miles of _____ kV V-Phase Lines
_____ miles of _____ kV Three-Phase Lines
_____ miles of secondary on secondary poles
_____ miles of services for _____ consumers

Underground Distribution Facilities
_____ miles of _____ kV Single-Phase Construction
_____ miles of _____ kV V-Phase Construction
_____ miles of _____ kV Three-Phase Construction
_____ miles of _____ Volt Secondary and Service Construction for _____ Consumers.

Distribution Line Changes, Conversion, and Removal
_____ miles of _____

Transmission Line Construction
_____ miles _____ kV; _____ miles _____ kV
_____ miles _____ kV underbuild

Substations and Other Major Facilities
_____ kVA _____ Voltage
_____ Name

This Project is located in _____ Counties, in the State(s) of _____ all as more fully described in the Plans, Specifications, Construction Drawings, and Contractor's Proposal therefore hereinafter referred to.

3. Work on energized lines. Unless stated below all construction work including attachments to existing poles and line changes, is to be done with the line deenergized. The hours during which existing lines will be deenergized are shown in the Contractor's Proposal. Approximately _____ miles of the line changes are to be made with the lines energized and such lines are in the following locations or areas: _____ and are more fully described in the Plans, Specifications, and Contractor's Proposal. For work in these locations the Bidder must provide personnel capable of working on energized lines. All such work shall be performed to meet at least the safety rules and regulations prescribed by the Owner for its own employees including the use of rubber gloves, hot sticks and associated protective equipment, a copy of which rules and regulations may be examined at the office of the Owner.

4. Owner-furnished materials. The unit prices in the Contractor's Proposal should include provisions for Owner-Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner-Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

5. Obtaining and transferring documents. The Plans, Specifications and Construction Drawings, together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____ upon the payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

6. Manner of submitting proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

7. Familiarity with conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back Statute" (48 State. 948) and regulations issued pursuant thereto.

8. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

9. Alternate designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

10. Proposals for distribution and transmission facilities. If the Project includes both distribution and transmission facilities, bidders shall bid on both of the facilities and the Owner will evaluate the Proposals on the basis of low total bid for both facilities.

11. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

12. Bid bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each

Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

13. Contractor's bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

14. Failure to furnish contractor's bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

15. Contract is entire agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

16. Minor irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

17. Balanced bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

18. Discrepancy in unit prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials," and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

19. Definition of terms. The terms *Administrator, Engineer, Supervisor, Project, Completion of Construction,* and *Completion of the Project* as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

20. The owner represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Where underground distribution construction is required, permission has been obtained from state and local highway and road authorities to install underground distribution power facilities and set pedestals, if any, on the highway and road right-of-way in the Project area. Notwithstanding such permission granted to the Owner, each Bidder is responsible for ascertaining that the equipment, methods of construction, and repair proposed to be used on the Project will meet all requirements of public authorities having jurisdiction over highway and road right-of-way. The successful Bidder will be required to furnish proof satisfactory to the Owner of compliance with this requirement. If required by highway or road authorities, the successful Bidder will furnish to such authorities a bond or meet other guaranty requirements to assure the prompt repair of all damages to highways and roads and their associated rights-of-way caused by the Bidder during construction of the Project. This requirement is in addition to and independent of the Contractor's Bond required under this Contract. The acceptance of a bid from any Bidder is not to be construed as approval of the Bidder's equipment or proposed construction methods by or on behalf of the highway and road authorities. Bidders may obtain information concerning the requirements of highway and road authorities by communicating with the following _____.

e. All funds necessary for prompt payment for the construction of the Project will be available.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

Owner _____

By _____

_____, 19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (hereinafter called the "Owner")

Article I—General

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications and Construction Drawings for the prices hereinafter stated.

The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors, plus the length of service drops, if any, measured horizontally from center of last pole to the point of attachment to the consumer's building.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such "fully listed" and "conditionally listed" materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening. The use of "conditionally listed" materials and equipment requires prior consent by the Owner or Engineer.

For distribution lines, the Bidder further agrees to furnish and use guy wire with ASTM Class _____ (Engineer to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using _____ (Engineer to insert standard soft drawn copper or aluminum alloy) conductor. All conductor ties on insulators shall be of the materials and methods shown in the following Tying Guide Drawings: _____ (Engineer to insert appropriate drawing numbers).

Ground rods and butt-type pole grounding plates shall be _____ (Engineer to insert galvanized steel or copper).

Underground primary cable shall have _____ coated copper neutral (Engineer to insert round or flat).

For transmission lines, the Bidder further agrees to furnish and use guy wire, overhead ground wire, and pole ground wire with ASTM Class ____ (Engineer to insert A, B, or C) zinc coating. Guy wire shall be the same size and grade as the overhead ground wire. Where overhead ground wire is not specified, the guy wire shall be _____ size, _____ grade.

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Engineer to insert Douglas fir or Southern Yellow Pine), treated with _____ (Engineer to insert type of preservative.)

The Bidder agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection, insured warranty, or quality assurance. The Bidder further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivered timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ____) and the Bidder will give a receipt (see page ____) therefore in writing to the Owner. The Bidder, further, will on behalf on the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the List and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of the Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work.

Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished By Owner. The Bidder will purchase all materials and equipment (other than Owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in:

REA Bulletin 50–3, Specifications and Drawings for 12.5/7.2 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

REA Bulletin 50–2, REA Specifications T–805A, Electric Transmission Specifications and Drawings, 34.5 kV through 69 kV;

REA Bulletin 50–1, REA Specification T–805B, Electric Transmission Specifications and Drawings for 115 kV through 230 kV;

as applicable, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows: _____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws, and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is ____ is not ____ required, and if required it posses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 9. Warranty of Good Faith. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. Warranty of Financial Resources. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Department of Treasury as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing

authorities all required information and reports pertaining to the Project, except as to the Owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than fifteen percent (15%) and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such fifteen percent (15%) shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price
	Above Materials are Located at:				

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price
			Above Material to be Delivered to:				

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

Article II—Construction

Section 1. Time and Manner of Construction

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost on the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Bidder will not be required to perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefore to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the number or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer may from time to time during the progress of the construction of the Project make such changes, additions or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder, but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, consideration of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Tools, Equipment, and Qualified Personnel. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and

equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously erected in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon by the Bidder and the Owner, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio: Provided, however, that in respect of sections H, M, and N, the ratio shall be calculated for only those units of the section which are similar to the new unit for which a price is to be determined.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and acceptance by the Owner and the Administrator and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except Owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except Owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner. Upon the approval by the Owner and the Administrator of a Certificate of Completion—Contract Construction, REA Form 187, showing the total cost of the construction performed, the Owner shall make payment to the Bidder of all amounts

to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance plus the costs of any additional change orders, unless such excess shall have been approved in writing by the Owner.

c. Notwithstanding the provisions of Section 1.a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of such Section as certified by the Engineer and approved by the Owner;

(2) submission to the Owner of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner of the inventory in respect of such Section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

If no Sections are designated in Article II, section 1c, the term *Section* shall mean for purposes of this subsection c and Article IV, section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of ____ percent [1] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment or interest on all unpaid balances shall be the fifteenth (15) day of each calendar month provided (1) the Bidder on or before the fifth (5) day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth (15) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth (15) day of such month, the due date for purposes of this subsection d shall be the fifteenth (15) day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent [2] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment or interest on all unpaid balances shall be the date of approval by the Owner of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See REA Form 224, Waiver and Release of Lien and REA Form 231, Certificate of Contractor). Upon the completion by the Bidder of the construction of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, material suppliers, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such section has been paid and that all such releases have been submitted to the Owner.

Section 3. Payments to Material Suppliers and Subcontractors. The Bidder shall pay each material supplier, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each material supplier or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless materials shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

k. The Bidder will furnish, prior to the commencement of underground distribution construction, proof, satisfactory to the Owner, of compliance with requirements of highway and road authorities having jurisdiction, including without limitation, the furnishing of a bond or other guaranty, and approval by such authorities of the equipment and methods of construction and repair to be used by the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or

its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the Engineer employed by the Owner, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings.

e. The term *Completion of Construction* shall mean full performance by the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, section 2 hereof, (2) the inventory referred to in Article III, section 1 hereof, and (3) other final documents. The term *Completion of the Project* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of

September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five percent (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

_____ (Bidder)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Distribution Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 35–5 means a pole 35 feet long, class 5.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative–CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure _____; 2. Thermal Process _____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 1—_____

Section A—Single Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section A—_____

Section B—V Phase Pole Top Assembly Units

A pole top assembly units consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section B—_____

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section C—_____

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary.

Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Engineer. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Bidder for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
D					

Total, Section D—_____

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy markers are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
E					

Total, Section E—_____

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
F					

Total, Section F—_____

Section G—Transformer Assembly Units

A transformer assembly units consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. This units does not include the pole top, secondary, service, or grounding assemblies.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section G—_____

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc. required to support service conductors or cable.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
J					

Total, Section J—_____

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
K					

Total, Section K—_____

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respective drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
M					

Total, Section M—_____

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The segmental length of actual clearing shall be measured in a straight line parallel to the transmission centerline using the maximum dimension of foliage cleared and projected to the ground line. All trees and underbrush across this width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Bidder, of danger trees outside of the right-of-way when so designated by the Engineer. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that the width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that the width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line). RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by one of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Number of units	Unit Price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
R					

Total, Section R—_____

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner[3 4].) In computing the compensation to the Bidder for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[5] The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Bidder and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____. (Engineer to insert Owner or Bidder).

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
UD					

Total, Section UD—_____

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place. This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching.

For submersible transformers, it includes the cable terminations, the enclosure and cover, drainable material (when specified),[6] and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UG					

Total, Section UG— _____

SECTION UK—UNDERGROUND SECONDARY AND SERVICE ASSEMBLY UNITS

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UK					

Total, Section UK— _____

SECTION UM—MISCELLANEOUS UNDERGROUND ASSEMBLY UNITS

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad in place.

[3] _____ Engineer check here if primary splices are permitted.

[4] _____ Engineer check here if secondary and service splices are permitted.

[5] _____ Engineer check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box.

[6] _____ Engineer check here if drainable material is specified.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Llabor & materials	
UM					

Total, Section UM— _____

SECTION UR—UNDERGROUND EXCAVATION ASSEMBLY UNITS

UR 1–S(d) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR 1–S(D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications, the Owner may specify UR 2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. *Example:* UR1–S(D) 3c for 3 cables plowed at one time.

UR 2–S(D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting.

This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, under- ground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR 2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR 2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width(W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench. *Note:* The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–5 Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No.	Number of units	Unit price			
		Labor	Materials	Labor & materials	Extended price—labor & materials
UR					

Total, Section UR—_____

Distribution Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portion thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portion thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units;

Section I—Removal assembly units;

Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Section H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Engineer in the respective sections.

Work included in these sections shall be performed under the schedule as set forth below: _____.

SCHEDULE OF DEENERGIZATION OF EXISTING DISTRIBUTION LINES UNDER WHICH WORK UNDER SECTIONS H, I, AND N SHALL BE PERFORMED

Line Section (to be designated by point to point description on detail map)	Hours and days of week when lines will be deenergized to permit line changes

The Bidder will so plan and perform its work on the above lines that it will be possible for the Owner to safely reenergize all lines involved at the expiration of the time limits set up in the above schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, the Bidder will notify the Owner in writing thereof, designating the lines to be deenergized and upon receipt of such notice, the Owner will deenergize such lines. Upon completion of work each day on such deenergized lines, the Bidder will notify the Owner thereof in writing or in such other manner as the circumstances permit designating the lines to be reenergized and stating that such lines may be safely reenergized and upon receipt of such notice, the Owner will reenergize such lines.

SECTION H—CONVERSION ASSEMBLY UNITS

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. The unit prices for materials should include only additional material that is required to complete the new unit, less suitable allowance for material removed.

Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit become the property of the Bidder and may, with the permission of the Engineer, be reused by the Bidder in the construction of other assembly units called for in the Construction Contract. Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, a H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Bidder utilizes the existing pin-type insulator, single upset bolt and neutral spool in the construction of the new assembly unit. The Bidder furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Bidder takes possession of the pole-top pin and two machine bolts and with the permission of the Engineer may reuse these elsewhere in the construction of the Project. The Bidder will not be held accountable to the Owner for the materials he so acquires.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under section I and the new conductor installed under section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under section I and the new pole and pole-top assembly will be installed according to section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those units not sufficiently explicit.

Unit	Description
H	

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (B–A)—_____

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (C–A) 1 Phase to 3 Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C–A)—_____

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (C–B) V Phase to 3 Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C–B)—_____
Total, Subsection H (B–A)—_____
Total, Subsection H (C–A)—_____
Total, Section H—_____

SECTION I—REMOVAL ASSEMBLY UNITS

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as approved by the Engineer.

The Bidder will be charged by the Owner for the full value of all materials removed under this section at the value shown in Table C. Such charges will be placed against the Bidder as units are removed and the value will be deducted from the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

Of the materials listed in Table C to be removed from existing lines, certain materials will be reused in the construction of the Project. Such materials to be reused are listed in Table C–1. Materials other than those listed in Table C–1 shall, if not damaged in handling, be returned to the Owner for full credit at the values shown in

Table D. The Bidder will be allowed full credit for all material items, other than those listed in Table C–1, returned to the Owner which, in the opinion of the Engineer, were not damaged by the Bidder in removal and handling even though the materials may not be reusable for reasons of obsolescence or deterioration. Such credits shall be allowed the Bidder as materials are returned to the Owner's warehouse and shall be added to the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

The unit removal prices shall include all material and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Bidder will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units: _____.

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Bidder is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-Top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and reinstalling of such conductor in accordance with the specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Bidder or the Owner. The Owner will furnish to the Bidder reels if it is to be returned to the Owner's warehouse on reels. The Bidder will retain possession of all jumpers, tie wire, armor rods, connectors, and other conductor accessories removed. These items will not be returned to the Owner. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D–6ACWC signifies the removal unit for 1,000 feet of 6A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Bidder in anchor removal units. The anchor will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-Protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 25 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus IG Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 25 kVA.

g. Secondary units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Number of units	Labor	
		Unit price	Extended price

Total, Section I—_____

TABLE C.—UNIT MATERIAL VALUES OF I UNITS CHARGEABLE TO BIDDER

Unit No.	Number of units	Unit material value [1]	Extended price

Notes: 1. Unit values are based on item values from Table D.

TABLE C–1.—MATERIAL ITEMS TO BE REUSED

REA item letter designation [1]	Description of material item	No. of Items

Notes: 1. See "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers."

TABLE D.—VALUES OF MATERIAL ITEMS CREDITABLE TO BIDDER

REA item letter designation [1]	Description of material item	Item value

Notes: 1. See "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers."

SECTION N—NEW ASSEMBLY UNITS

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Distribution Construction Units—New Construction, except that these units are prefixed by the letter N. For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

SECTION N—NEW ASSEMBLY UNITS

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
N					

Total, Section N— _____

Proposal Summary

Recapitulation of Sections

New Construction

Overhead
Section—1 _____ $_____
Section—A _____ _____
Section—B _____ _____
Section—C _____ _____
Section—D _____ _____
Section—E _____ _____
Section—F _____ _____
Section—G _____ _____
Section—J _____ _____
Section—K _____ _____
Section—M _____ _____
Section—R _____ _____
Total Overhead _____
Underground
Section—UD _____ $_____
Section—UG _____ _____
Section—UK _____ _____
Section—UM _____ _____
Section—UR _____ _____
Total Underground _____
Total New Construction $_____
Line Changes
Section—H _____ $ _____
Section—I _____ _____
Section—N _____ _____
Total Line Changes $ _____
Total Distribution Line Construction
$_____

Transmission Construction Units

SECTION 1—POLE UNITS

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 60–3 means a pole 60 feet long, class 3.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure _____; 2. Thermal Process _____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 1—_____

SECTION 2—POLE TOP ASSEMBLY UNITS

A pole top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TH					
TP					
TS					
TSS					
TSZ					

Total, Section 2 _____

SECTION 3—CONDUCTOR ASSEMBLY UNITS

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 3 _____

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:

Diameter Bull Wheel _____ in.
Diameter Groove _____ in.
Conductor Bending Radius _____ in.
Thickness of Neoprene at Bottom of Groove _____ in.
Stringing Sheave Diameter; Tangent _____ in., Large Angle _____ in.

SECTION 4—GUY ASSEMBLY UNITS (TG UNITS)

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TG-1					
TG-2					
TG-3					
TG-4					
TG-5					

Total, Section 4— _____

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TA-1-5					
TA-1-8					
TA-3					

Total, Section 5— _____

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TM					

Total, Section 6— _____

Section 7—Right-of-Way Clearing Units

TM-12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors. (See Detail A, Drawing TM-12-2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line. (See Detail B, Drawing TM-12-2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. (See Detail C, Drawing TM-12-2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of 1,000-foot TM-12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM-12 (1). This unit is identical with TM-12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures). (See Detail D, Drawing TM-12-2A.)

TMC-12, TMC-12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM-13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit, or ornamental trees unless otherwise directed by the Engineer in writing. (See Drawings TM-12-2A and TM-13 for examples of danger trees.)

The measurement of the length of clearing off the right-of-way shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line. (See Details E, F, G, and H, Drawing TM-12-2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM-12-2A.) Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000, shall give the number of TM-13 units. (Example: Details E, F, G, and H, Drawing TM-12-2A, total .1 of a TM-13 unit.)

TM-14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way centerline) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM-12-2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM-12-2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM-14 (1). This unit is identical with TM-14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet in width (to be measured _____ (_____) feet wide (See Detail D, Drawing TM-12-2A.)

TM-15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured

_____ (_____) feet on one side of the right-of-way centerline) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements (When specifying TM units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 6—_____

Proposal Summary

Recapitulation of Sections:

Section—1 _____ $_____
Section—2$ _____ $_____
Section—3 _____ $_____
Section—4 _____ $_____
Section—5 _____ $_____
Section—6 _____ $_____
Section—7 _____ $_____
Total Transmission Line Construction _____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings. Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found on the lists of Owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A.

Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications. The tabulation of Construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-pole group operated air break switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning arresters. A Construction Unit consists of one single arrester.

Group D. Single pole disconnecting switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil circuit breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil circuit reclosers. A Construction Unit consists of a complete single-phase or three phase oil circuit recloser as specified in the drawings.

Group G. Meters, relays and instrument transformers. A Construction Unit consists of one meter, relay potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and supervisory control equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description

of these Groups shall be provided by an addition to this section of the Specifications for Construction.

_____ Station Construction Units
Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Proposal Summary

_____ Substation $_____
_____ Substation _____
_____ Substation _____
_____ Switching Station _____
_____ Switching Station _____
Total Station Construction $_____

Proposal Recapitulation

Distribution line construction $_____
Transmission line construction _____
Substation and Switching Station
Construction _____
Total $_____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

Distribution Construction Units: Sections:
_____
Transmission Construction Units: Sections:
_____
Substation and Switching Station Construction: Stations (name):
_____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.352 Electric transmission construction contract (labor and materials), REA Form 831.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric Transmission Construction Contract (Labor and Materials)

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project will be received by the Owner on or before _____ o'clock ____ M., _____, 19____ at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Transmission Line Construction

_____ miles _____ kV; _____ miles _____ kV _____ miles _____ kV underbuild

Substations and Other Major Facilities

_____ kVA _____ Voltage _____ Name

The Project is located in _____ Counties, in the State of _____ all as more fully described in the Plans, Specifications, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner furnished materials. The unit prices in the Contractor's Proposal shall include provisions for Owner Furnished Materials since as stated in Article 1, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining and transferring documents. The Plans, Specifications and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer, _____ at the latter's office at _____ upon the payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the Administrator) and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

5. Manner of submitting proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

9. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to furnish contractor's bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder"

shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is entire agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Balanced bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in unit prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Definition of terms. The terms *Administrator, Engineer, Supervisor, Project, Completion of Construction* and *Completion of the Project* as used throughout this Contract shall be as defined in Article VI, section 1, of the Contractor's Proposal.

18. The Owner Represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Prompt payment for the construction of the Project will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time and completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a hereof.

_____ Owner

By _____

_____, 19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications and Construction Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening.

The Bidder further agrees to furnish:

	Type	Size	Galvanizing class
Overhead ground wire	.....	.....	.....
Guy wire	.....	.....	.....
Structure ground wire	.....	.....	.....

(Engineer to insert Type, Size and Galvanizing Class as appropriate)

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Engineer to insert Douglas Fir or Southern Yellow Pine), treated with _____ (Engineer to insert type of preservative.)

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ___) and the Bidder will give a receipt (see page ____) therefor in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, section 1(a) of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists, Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnished, and the Bidder accepts, materials in excess therefor, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work. Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will

purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The Notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in the Electric Transmission Specifications & Drawings, REA Form 805, as applicable, together with the Proposal and Acceptance constitute the Contract. The plans, consisting of maps and special drawings, are identified as follows: _____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is _____ is not _____ required, and if required it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19___.

Section 9. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the Inventory. If the Owner changes the quantity of any Assembly Unit or Assembly Units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

Section 13. Description of Contract. The Notice and Instructions to Bidders, Plans, Specifications for Construction and Construction Drawings, all attached hereto and made a part hereof together with the Proposal and Acceptance constitute the contract. The Plans and Construction Drawings are identified as follows: _____

List of owner's materials on hand

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above materials are located at:

NOTES: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

List of materials ordered by owner but not delivered

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above material to be delivered to:

NOTES: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Construction

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles or install anchors if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any

operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer and with the approval of the Administrator,[3] may from time to time during the progress of the construction of the Project make such changes in, additions to or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously installed in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner and approved by the Administrator[3] prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio.

Section 6. Supervision and Inspection

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

[1] 1 As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

[3] See Footnote 1.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship

a. The acceptance of any materials, equipment (except owner furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Assembly Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the Maximum Contract Price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of Assembly Units and, after checking such Inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of construction of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner and the Administrator of the inventory in respect of such section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

If no sections are designated in Article II, section 1c, the term *Section* shall mean for purposes of this subsection c and Article IV, Section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of _____ percent[4] (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of _____ percent[5] (_____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and

[4] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued

[5] See Footnote 4

a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements.

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense:

Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million for each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or polices of insurance, primary and excess including umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million for each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion, or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings and maps attached hereto.

e. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, section 2 hereof, (2) the inventory referred to in Article III, section 1 hereof, and (3) other final documents. The term *Completion of the Project* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States.

Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called *Kick-Back* Statute thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator. No acceptance of this Proposal shall become effective until approval in writing of the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)

Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Transmission Construction Units

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 45–3 means a pole 45 feet long, class 3.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure ____; 2. Thermal process: ____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price		Labor and materials	Extended price— labor and materials
		Labor	Materials		

Total, Section 1— _____

Section 2—Pole-Top Assembly Units

A pole-top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	Number of units	Unit price			Extended price— labor and materials
		Labor	Materials	Labor and materials	
TH					
TP					
TS					
TSS					
TSZ					
TUS–1					
TUS–2					

Total, Section 2— _____

Section 3—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

_____ Tension Stringing (Engineer check when required.)

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 3— _____

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:

Diameter Bull Wheel _____ in.
Diameter Groove _____ in.
Conductor Bending Radius _____ in.
Thickness of Neoprene at Bottom of Groove _____ in.
Stringing Sheave Diameter: Tangent _____ in., Large Angle _____ in.

Section 4—Guy Assembly Units

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TG–1 TG–2 TG–3 TG–4 TG–5					

Total, Section 4— _____

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire.

Unit No.	Number of units	Unit price			Extended price— labor and materials
		Labor	Materials	Labor and materials	
TA–1–5 TA–1–8 TA–3					

Total, Section 5— _____

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TM					

Total, Section 6— _____

Section 7—Right-of-Way Clearing Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line, parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way

to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

TM–15. The unit is 1,000 feet in length and _____ feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way, to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

TRANSMISSION RIGHT-OF-WAY UNIT

Unit No.	Number of units	Unit price			Extended price—Labor and materials
		Labor	Materials	Labor and materials	

Total Section 7— _____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found in the lists of owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A. Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications.

The tabulation of construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-pole group operated air break switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single pole disconnecting switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil circuit reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, relays and instrument transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and supervisory control equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ Station Construction Units

Unit No. _____

Name and Description of Construction Unit

_____

No. of Units _____

Unit Prices

Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials

_____

Total Price _____

Proposal Summary

Recapitulation of Sections:
Section—1 _____ $_____
Section—2 _____ $_____
Section—3 _____ $_____
Section—4 _____ $_____
Section—5 _____ $_____
Section—6 _____ $_____
Section—7 _____ $_____
Section—8 _____ $_____
Total _____ $_____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following: Transmission Construction Units: Sections:

_____

The total contract price is $ _____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of Clause]

§§ 1726.353–1726.399 [Reserved].

Subpart J—Contract Closeout

§ 1726.400 Final contract amendment.

As needed, a final contract amendment will be prepared and processed in accordance with § 1726.24(b) prior to or in conjunction with the closeout of the contract.

§ 1726.401 Material contract closeout.

This section is applicable to contracts executed on REA Form 173.

(a) *Delivery inspection.* The borrower, acting through the engineer, will verify that all materials are delivered in proper quantities, in good condition, and in compliance with applicable specifications.

(b) *Closeout documents.* The borrower, acting through its engineer, will obtain from the supplier a "Buy American" certificate, REA Form 213, any manufacturer's guarantee(s) and, if applicable, a copy of REA Form 224, Waiver and Release of Lien. Closeout documents for materials contracts need not be submitted to REA unless specifically requested by REA on a case by case basis.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower shall make final payment to the supplier in accordance with the provisions of the material contract or purchase order.

§ 1726.402 Equipment contract closeout.

This section is applicable to contracts executed on REA Form 198.

(a) *Final inspection and testing of equipment.* The borrower, acting through its engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, engineer, and the supplier or manufacturer. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its engineer, will prepare a report of the inspection and testing, obtain a copy of the report from the engineer, and submit a copy to the supplier or manufacturer. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Closeout documents.* (1) The borrower, acting through its engineer, will obtain the following executed documents:

(i) Certification by the project engineer in accordance with paragraph (a) of this section.

(ii) All guarantees or warranties.

(iii) A "Buy American" certificate from the supplier or manufacturer.

(2) Closeout documents for materials contracts need not be submitted to REA unless specifically requested by REA.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower will make final payment to the supplier or manufacturer in accordance with the provisions of the equipment contract.

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on REA Forms 200, 203, 257, 764, 786, 830, and 831.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower, acting through its architect or engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its architect or engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, architect or engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its architect or engineer, will prepare a report of the inspection and testing, obtain a copy of the report from its architect or engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from its architect or engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by its architect or engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify the architect or engineer when construction is complete. The borrower, acting through the architect or engineer, will schedule such final inspection at a time mutually agreeable to the borrower, architect or engineer, contractor, and the respective REA General Field Representative (GFR), if the GFR has notified the borrower or its architect or engineer of a desire to observe the final inspection. The borrower, acting through its architect or engineer, will perform a final inspection of the construction and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower, acting through its architect or engineer, will obtain executed copies of the following documents:

(i) REA Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on REA Form 257), or REA Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(ii) REA Form 213, "Buy American" certificate.

(iii) REA Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) REA Form 231, Certificate of Contractor.

(v) REA Form 254, Construction Inventory, including all supporting documents, such as REA Forms 254a–c and construction change orders, for contracts executed on REA Forms 203, 764, 830 or 831.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable REA requirements regarding retention of records.

(ii) For contracts subject to REA approval, the borrower will submit the following closeout documents for REA approval (through the GFR except for generation projects):

(A) REA Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on REA Form 257), or REA Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(B) REA Form 231, Certificate of Contractor.

(C) REA Form 254, Construction Inventory, including all supporting documents, such as REA Forms 254a–c and construction change orders, for contracts executed on REA Forms 203, 764, or 831.

(iii) For contracts not subject to REA approval, the closeout is not subject to REA approval. The borrower will send one copy of REA Form 181 or REA Form 187 (as applicable) to REA for information prior to or in conjunction with the applicable REA Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to REA unless specifically requested by REA.

(d) *Final payment.* (1) The borrower will make final payment to the contractor upon completion of approval of all closeout documents by the parties to the contract, in accordance with the terms of the construction contract.

(2)(i) Upon receipt of final payment by the contractor, the borrower will obtain from the contractor a certification of receipt of final payment in the following form:

"The undersigned acknowledges receipt of the final contract payment of $_____ as satisfaction in full of all claims of the undersigned under the construction contract between the undersigned and _____ (borrower), dated as amended, and as complete performance by the latter of all obligations to be performed by it pursuant thereto. The total amount received under this contract is shown above."

(ii) The certification in paragraph (d)(2)(i) of this section is to be executed for the contractor by: the sole owner, a partner, or an officer of the corporation. Where this certification is executed for the corporation by a person other than the president, a certified copy of the authorization from the corporate board must be included with the certification. This certification is not a replacement for itemized invoices.

§ 1726.404 Non-project construction contract closeout.

This section is applicable to contracts executed on REA Forms 201, 790, and 792.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower, acting through its engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, its engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its engineer, will prepare a report of the inspection and testing, obtain a copy of the report from its engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify its engineer when construction of a section of the project is complete. The borrower, acting through engineer, will schedule such final inspection at a time mutually agreeable to the borrower, its engineer, contractor, and the respective GFR, if the GFR has notified the borrower or its engineer of a desire to observe the final inspection. The borrower, acting through its engineer, will perform a final inspection of the construction of that section of the project and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction of a section of the project (including all changes and corrections by the contractor), the borrower, acting through its engineer, will obtain executed copies of the following documents:

(i) REA Form 792b, Certificate of Contractor and Indemnity Agreement

(ii) REA Form 213, "Buy American" certificate.

(iii) Certification by the project engineer in accordance with paragraph (a) of this section, if applicable.

(iv) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable REA requirements regarding retention of records.

(ii) For contracts not subject to REA approval, the closeout is not subject to REA approval and the closeout documents need not be sent to REA unless specifically requested by REA.

§ 1726.405 Inventory of work orders (REA Form 219).

Upon completion of the contract closeout, the borrower shall complete REA Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

Dated: April 20, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–11541 Filed 6–2–94; 8:45 am]

BILLING CODE 3410–15–P

Federal Register

Friday
June 3, 1994

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995

Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1994–1995 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, bag limits, methods, and means related to taking of wildlife for subsistence uses during the 1994–1995 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife Regulations", which expire on June 30, 1994.

EFFECTIVE DATES: This rule becomes effective on July 1, 1994, and remains effective through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for subparts A, B, and C, and the annual subpart D regulations. All Board members have reviewed this final rule and agree with its substance. Because this final rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

On June 1, 1993, the 1993–1994 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (58 FR 31252–31295). That rulemaking amended subpart D of 36 CFR part 242 and 50 CFR part 100.

Over the course of the 1993–1994 regulatory year, the Board executed 6 special actions on the 1993–1994 subpart D regulations. Two of those actions were emergency or temporary closures enacted to protect the continued viability of particular wildlife populations or herds. The Board also established season dates for Federal subsistence hunts for moose in Unit 18, caribou in Unit 12, and muskox in Unit 26.

Proposed subpart D regulations for the 1994–1995 seasons and bag limits, and methods and means were published on September 2, 1993, in the **Federal Register** (58 FR 46678–46706). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change to subpart D. The public then had an additional 60 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils (Regional Councils) met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. Presently, the Councils are composed of no fewer than seven and no more than thirteen members who are residents of the region and are knowledgeable of local subsistence concerns. Charters for these councils were approved and signed by former Secretary of the Interior Lujan on January 19, 1993.

The Regional Council appointments were made with due consideration of adequate geographical, cultural, and user diversity within each region. As specified in the Council charters, initial appointments were staggered from one to three years. Subsequent appointments will carry 3-year terms. Appointment terms expire on December 2 of the appropriate year. Secretary of the Interior Babbitt made the appointments

to the Regional Councils on August 11, 1993. The Regional Councils have a substantial role in helping residents of the region review the proposed rule and make comments on it. Following publication of the proposed rule, each Council conducted public meetings to develop regulation proposals. The Regional Councils also conducted a second round of meetings to develop their recommendations on the proposals. The Council Chairs or Vice-Chairs then represented their Council at the Board meeting in April 1994.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 100.1 to 100.24, remain effective and apply to this proposed rule for subpart D. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

Federal lands which "means lands and waters and interests therein title to which is in the United States"; and

public land or *public lands* which "mean lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish the authority of the Departments to manage submerged lands, title to which is held by the United States.

Subsistence Taking of Fish and Shellfish Regulations

This proposed rule contains no subsistence fishing or shellfish taking provisions. The Board intends to propose to the Secretaries that the regulatory year governing subsistence fish and shellfish taking activities be changed from the June 1–July 30 annual cycle to a January 1–December 31 cycle. Such a change may provide more consistency during those months when fish and shellfish are most commonly harvested. The current subsistence fish/shellfish regulations will be addressed in a separate interim rule as soon as possible. The interim rule will likely extend the current regulations until litigation appeals are concluded or the agency is directed to issue revised rules, whichever occurs first.

Summary of Comments (Proposals)

On September 2, 1993, the proposed rule for Subsistence Management Regulations for Public Lands in Alaska—Subpart D, 1994–1995 was published in the **Federal Register** (58 FR 46678–46706). During the 60-day period to suggest changes for the 1994–1995 regulatory year, the Regional Councils held their initial meetings in conjunction with public hearings on the 1994–1995 subpart D regulation proposed rule. Meetings were held in Sitka, Barrow, Bethel, Kotzebue, Fairbanks, Kodiak, Nome, Anchorage, Naknek, and McGrath. The meetings were used to initiate the Regional Council system and to assist in the development of suggested changes to the 1994–1995 subpart D proposed rule.

A total of 107 proposals for 1994–1995 subpart D regulations was received. Of those, 88 were within the scope of the Board's authority under subpart D. Most of the proposals which were not accepted involved requests for changes in customary and traditional use determinations found in subpart C of the Federal subsistence management program regulations. Other proposals which were not considered requested delegation of Board authorities that could not be relinquished to nongovernment entities, or requested application of hunting or fishing regulations to non-Federal lands or waters. One proposal questioned the entire framework of the Federal Subsistence Management Program, one requested regulations for waterfowl, and another proposed inclusion of a non-rural Native group within the program.

On November 15, 1993, a booklet describing the 88 proposals was distributed to the public with notice that the Board would accept public comments on these 88 proposals through January 14, 1994. After the public comment period, the Regional Councils held meetings in regional centers to obtain local input on specific proposals affecting each region. Of the 88 proposals, the Board acted on 79 during a public meeting April 11–15, 1994. The remaining proposals were withdrawn by their proponent prior to the Board meeting or during the meeting.

Analysis of Proposals Rejected by the Board

The Board did not adopt five proposals requesting relief on method and means restrictions. Of the five proposals, four were related to the use of designated hunters to harvest wildlife for others, especially the elderly or incapacitated. The Board recognized that the taking of resources by a few hunters in a community and the sharing of the harvest is a cultural tradition throughout Alaska. The Board in rejecting these proposals directed the staff to work with the Regional Councils to develop proposed regulations for the 1995–96 regulatory year that address the situation on a State-wide basis. One proposal requested liberalization of same day airborne trapping of wolves and other furbearers. Seven of the Regional Councils recommended rejection of this proposal because the use of airplanes to shoot furbearers does not constitute a customary and traditional use. Three Regional Councils supported the proposal. Following the recommendation supplied by seven Regional Councils, the Board rejected this proposal.

Seven proposals to change existing seasons were rejected by the Board because approval of the action was not biologically justified or would unnecessarily restrict existing subsistence uses. All seven were either not acted upon by the respective Regional Council because of other pending proposals or were recommended for rejection.

Two proposals to alter existing subsistence moose hunting regulations for Unit 1(B) were rejected by the Board. These proposals requested removing antler restrictions in the Stikine River area. The Regional Council recommended rejecting these proposals, and the Board followed the Regional Council's recommendation denying these proposals due to the declining moose population and concern regarding future harvest.

The Board addressed a proposal to open a moose hunt in Unit 3, but found insufficient customary and traditional use information to warrant

establishment of a moose season without going through a process for making a customary and traditional use determination.

The Board addressed two proposals to modify the deer season in Unit 4. In addressing these proposals, the Board adopted another proposal supported by the Regional Council that better addressed the opportunity for both subsistence and non-subsistence hunters.

Five proposals requesting establishment of seasons for caribou and moose on the Kenai Peninsula (Units 7 and 15) were deferred, as recommended by the relevant Regional Council, until customary and traditional uses of those species could be comprehensively evaluated. In the interim, the Board's past action prevents adoption of any new subsistence seasons on the Kenai Peninsula until the full review of customary and traditional uses is completed.

One proposal was submitted to open Federal lands in Units 11 and 13 to nonsubsistence uses. The Regional Council recommended that the Board reject this proposal because of potential adverse impacts on a declining wolverine population. The Board agreed with the Regional Council and rejected the proposal.

One proposal to close Federal lands to non-subsistence uses was considered as three separate proposals to allow a more detailed examination of each area requested for closure. All three were rejected: two were deferred at the request of the Regional Council to allow for more study, and the third was deferred because administrative changes may resolve perceived conflicts. In the third area, uses will also be closely monitored and will be reviewed during the next regulatory cycle.

Three proposals dealt with the reestablishment of a special Lime Village Management Area, a revision in the harvest system from a community to an individual system, and the establishment of a State permit system. After considerable deliberation, with the support of the Lime Village community and Regional Council, and with acceptance of ADF&G, the Board rejected all three, retaining the present subsistence regulations for the area and emphasizing a community harvest reporting system.

Two proposals dealing with moose in Unit 19(A) and 21(E) were deferred until the next Board meeting because an adjacent, affected Regional Council had not had the opportunity to make recommendations on the proposals.

Two proposals on Dall Sheep in Units 23 and 26, proposing boundary adjustments and horn curl restrictions, were rejected based on Regional Council recommendations that the additional curl restrictions would adversely impact subsistence uses. The boundary modifications were handled in another proposal.

To assure the continued viability of the Chisana caribou herd, the Board rejected a proposal calling for a continued subsistence season on the herd. The Regional Council had recommended that the Board take such action.

The Board rejected two proposals that were adequately addressed in other proposals. This was done in concurrence with Regional Council recommendations.

One proposal raised the issue of the amount of land in a given area that is necessary to justify establishment of Federal subsistence regulations. Because there exists no established policy regarding the minimum acreage or Federal/State land ratios at which Federal authority should be exercised, the Board followed the Regional Council's advice and rejected this proposal.

Analysis of Proposals Adopted by the Board

All of the adopted proposals were recommended for adoption by the respective Regional Councils and were based on meeting customary and traditional harvest practices or protecting wildlife populations. Detailed information relating to justification on each proposal may be found in the transcripts for the Board meeting, available for review at the Office of Subsistence Management at the address listed previously.

• Throughout the document, minor editorial revisions were made to simplify wording or reduce redundancy.

• The Board adopted one proposal that had Statewide impacts. This proposal modified and in many areas aligned seasons or harvest limits on wolves to correspond with State regulations. The Board generally adopted the Regional Council recommendations that in some regions modified the proposed season dates.

• Modifications were made to provide for the harvest of moose for the Nuchalawoyya Potlatch and for the Kaltag/Nulato Stickdance that the Board had approved at an earlier meeting but had not yet been incorporated in the regulations.

Southeast Region

Six proposals affecting the Southeast Region were acted on by the Board and have resulted in changes to regulations found in § ____.25. The following Board actions affect the Southeast Region and have been incorporated in this final rule:

• Modified boundaries to provide a consistent description with ADF&G within a portion of Unit 4.

• Deleted the prohibition against the taking of ungulates from a boat in Unit 4.

• Eliminated the public lands closure for deer in Unit 4.

• Closed the marten, mink, and weasel trapping season on Chichagof Island to protect the viability of the marten population.

• Changed the brown bear harvest limit in Unit 5 to one bear every year with no sealing requirements but with some harvest reporting requirements.

• Established a community harvest in Unit 5(A) for the take of up to 10 moose for ceremonial uses.

Southcentral Region

The Board evaluated and acted upon one proposal affecting the Southcentral Region. Resulting changes in the regulations are contained in § ____.25.

• Lengthened the beaver trapping season in Unit 13, providing uniformity with State seasons.

Kodiak/Aleutians Region

The Board evaluated and acted upon two proposals affecting the Kodiak/Aleutians Region. Resulting changes in the regulations are contained in § ____.25.

• Closed the caribou season in Unit 9(D) and 10 (Unimak Island) due to rapid population declines.

• Modified boundaries to provide a consistent description with ADF&G within a portion of Unit 8.

Bristol Bay Region

Nine proposals affecting the Bristol Bay Region were acted on by the Board and resulted in changes to regulations contained in § ____.25. As a result of Board actions, the following changes are incorporated into this final rule:

• Extended the beaver trapping season in Unit 9(B) and 17 and allowed for the use of firearms in the later part of the season in Unit 9(B).

• Changed the brown bear harvest limit for residents of Nondalton to a bear every year and modified the reporting requirements.

• Extended the caribou season in Units 9(B), 17(B), and 17(C) and increased the harvest limit.

• Provided for the take of moose for ceremonial potlatches for Nondalton residents.

• Lengthened the moose season in Unit 9(B) and eliminated a permit

requirement for moose harvest in Unit 9(C).

• Opened a limited hunt for caribou on the Nushagak Peninsula in Units 17(A) and 17(C).

Yukon-Kuskokwim Region

Three proposals affecting the Yukon-Kuskokwim Region were acted on by the Board and have changed Subpart D regulations found in §____.25. The following actions affect the Yukon-Kuskokwim Region and are incorporated into this final rule:

• Opened a moose season in the lower Yukon River Area of Unit 18.

• Extended the moose season in Unit 18 to accommodate local customary and traditional use patterns.

• Increased the harvest limit for wolves in Unit 18.

Western Interior Region

The Board acted on three proposals affecting the Western Interior Region resulting in changes to Subpart D regulations in §____.25. The following board actions affect the Western Interior Region and are included in this final rule:

• Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.

• Changed the moose season in Units 21(D) and realigned boundaries and seasons in Unit 24 to more closely match those of the State and reduce confusion.

• Allowed the incidental take of Arctic fox while trapping for red fox.

Seward Peninsular Region

The Board evaluated and acted upon two proposals affecting the Seaward Peninsula Region resulting in changes to Subpart D regulations in §____.25. The following Board actions affect the Seward Peninsular Region and are included in this final rule:

• Shortened the antlerless moose season in Unit 22(D) to protect a declining population.

• Allowed the use of snowmachines to take moose and caribou in Unit 22. Harassment of wildlife, such as herding or driving, remains prohibited.

Northwest Arctic Region

The Board acted on three proposals for the Northwest Arctic Region resulting in changes to Subpart D regulations in §____.25. The following Board actions affect the Northwest Artic Region and are included in this final rule:

• Modified moose regulations in Unit 23 to change boundaries and seasons. The Board's action may aid recovery of the declining moose population in this portion of Unit 23.

• Corrected a boundary description and permit requirement error for sheep in Unit 230

Eastern Interior Region

The Board acted on eight proposals which affect the Eastern Interior Region resulting in changes to Subpart D regulations in §____.25. The following Board actions affect the Eastern Interior Region and are included in this final rule:

• Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.

• Reworded the requirements on snare size for trapping wolves in Units 12 and 20(E).

• Closed some Federal lands in Unit 12 to protect the Chisana caribou herd, revised regulations for Units 20(E) and 25(C) to protest the Fortymile caribou herd, and revised the area descriptions and caribou seasons in Units 20(F) and 25(C).

• Modified the Unit 25(D) (West) moose regulation to remove the requirement for "antlered" bull, modified the season dates for moose within Unit 25(D) (West), and authorized a four brow tine option to the antler restriction in Unit 20(A).

• Eliminated the permit requirement for moose in Unit 25(A) within the Dalton Highway Corridor Management Area.

• Aligned the trapping season with the State season, allowing greater harvest opportunity and reducing confusion.

North Slope Region

The Board acted on four proposals which affect North Slope Region resulting in change to Subpart D regulations in §____.25. The following Board actions affect the North Slope Region and are included in this final rule:

• Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.

• Extended an aircraft use restriction in a portion of Unit 26(A) and extended the moose season in a portion of Unit 26(A).

• Allowed the use of boats and snowmachines to take caribou in Unit 26 and the use of rimfire cartridges to take swimming caribou in Unit 26. Harassment of wildlife, such as herding or driving, remains prohibited.

• Lengthened the muskox season in Unit 26(C).

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the decision made by the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964 published May 29, 1992) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANICLA

The intent of all Federal subsistence regulations is to provide opportunities for subsistence uses subject to the limitation of protecting healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810

analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, including the annual process for setting hunting and fishing regulations, would have some local impacts on subsistence uses, but would not constitute a significant restriction of subsistence uses under the "may significantly restrict" standard.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed if the Regional Councils and Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to Office of Management and Budget review under E.O. 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments of the Interior and Agriculture have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA, Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and record keeping requirements, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In Subpart D of 36 CFR Part 242 & 50 CFR Part 100, § ____.25 is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ____.25 Subsistence taking of wildlife.

Subpart D—Subsistence Taking of Fish and Wildlife

§ ____.25 Subsistence taking of wildlife.

(a) *Definitions.* The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck,

brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur means any tanned or untanned external covering of an animal's body, excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § ____.25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § ____.25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by these regulations is prohibited.

(1) Except for special provisions found at § ____.25(k) (1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio

communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞-inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at § ____.25(k)(1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(h) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at § ____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) *Possession and transportation of wildlife.*

(1) Except as specified in § ____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) *Individual harvest limits.*

(i) Harvest limits authorized by § ____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § ____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits of grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § ____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § ____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State

statutes or a regulation promulated thereunder.

(10) *Evidence of sex and identity.*

(i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvest sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portion of the external sex organs remain attached to indicate conclusively the sex of the animal; however, § ____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, § ____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be sorted or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) *Sealing of bear skins and skulls.*

(1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–6, 11–14, 16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If the skin or skull of a bear taken in Unit 9(B) is removed from the area, it must first be sealed by an ADF&G representative in Port Alsworth or King Salmon; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § ____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § ____.25(f).

(h) *Utilization of wildlife.* (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § ____.25 do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) *Unit regulations.* Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at § ____.25(k)(1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at § ____.25(k)(1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistance uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(1) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(2) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 5 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Brown Bear:	
1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer.	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer.	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31.	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only.	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion south of Bradfield Canal, East of Ernest Sound, west of Anan Creek/Anan Lake/Boulder Lake drainage, and north of Frosty Creek. Public lands are closed to goat hunting.	No open season.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only.	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 30.

Harvest limits	Open season
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only.	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only.	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull.	Sept. 15–Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by Federal registration permit only. Public lands within the Stikine River drainage are closed to the taking of moose, except in accordance with these regulations by qualified rural residents during seasons identified above.	Sept. 15–Oct. 15.
Remainder of Unit 1(B).	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
Unit 1 (A), (B), and (C)—No limit.	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Deer:	
4 antlered deer	Aug. 1–Dec. 31
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(3) Unit 3.

(i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough,

from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer.	Aug. 1—Nov. 30
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Oct. 1–Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1–May 15.

Harvest limits	Open season
Trapping	
Beaver:	
Unit 3–Mitkof Island No limit.	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island No limit.	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(4) Unit 4.

(i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations;

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer:	
6 deer; however, antlerless deer may be taken only from Sept. 15–Jan 31.	Aug. 1–Jan. 31.
Goat:	
1 goat by State registration permit only.	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1.–May 15.
Trapping:	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit.	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island.	No open season.
Remainder of Unit 4—No limit.	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island.	No open season.
Remainder of Unit 4—No limit.	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit.	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(5) Unit 5.

(i) Unit 5 consists of all Gulf of Alaska drainages an islands between Cape Fairweather and the center line of Icy Bay including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting.

(D) The taking by residents of Unit 5(A) of up to 10 moose per regulatory year in Unit 5(A), except Nunatak Bench, is allowed for ceremonial potlatches and other ceremonial uses, under the terms of a Federal registration permit. Moose may be taken from August 1 through December 31. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with any potlatch moose permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Brown Bear:	
1 bear by Federal registration permit only.	Sept. 1–May 31
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat:	
1 goat by State registration permit only.	Aug. 1–Dec. 31
Moose:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
No limit	Nov. 10–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Nov. 10–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Nov. 10–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(6) Unit 6.

(i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting:	
Black Bear:	
1 bear	Sept. 1–June 30.
Deer:	
4 deer; however, antlerless deer may be taken only from Nov. 1–Dec. 31.	Aug. 1–Dec. 31.
Goats:	
Unit 6 (A), (B)—1 goat by State registration permit only.	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG224, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only.	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG224—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat	
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands.	No open season.
Coyote:	
Unit 6 (A) and (D)—2 coyotes.	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	July 1–June 30.
Remainder of Unit 6(C)—No limit.	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
Trapping—20 beaver per season.	Dec. 1–Mar. 31.
Coyote:	
Unit 6 (A), (B) and (D)—No limit.	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit.	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(7) Unit 7.

(i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 7–3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves.	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves.	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.

Harvest limits	Open season
Otter:	
No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, anterless deer may be taken only from Oct. 1—Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Jan. 31.

(9) Unit 9.

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(C) A firearm may be used to take beaver in Unit 9(B) under a trapping license from April 1–May 31.

(D) Unit 9(B) (Nondalton residents only) is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 9(B), provided that the hunter has obtained a Federal registration permit prior to hunting.

(E) The taking by residents of Nondalton of up to 6 bull moose per regulatory year in Unit 9(B) is allowed for ceremonial potlatches, under the terms of a Federal permit. Bull moose may be taken from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 6 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Rural residents of Nondalton only—1 bear by Federal registration permit only.	Oct. 1–Oct. 21. May 10–May 25
Unit 9(B)—1 bear every four regulatory years.	Oct. 1–Oct. 21 (odd years only); May 10–May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit only.	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	

Harvest limits	Open season
Unit 9(A) and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however no more than 2 may be bulls.	Aug. 1–Apr. 15.
Unit 9(D)	No open season.
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9.	July 1–Apr. 30.
Remainder of Unit 9(E)—4 caribou.	Aug. 10–Apr. 30.
Sheep:	
1 ram with 7/8 curl horn..	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull.	Sept. 1–Sept. 15.
Unit 9(B)—1 antlered bull.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 antlered bull.	Sept. 1–Sept. 20. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31.	Jan. 1–May 31.
Remainder of Unit 9—40 beaver per season.	Jan. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(10) Unit 10.

(i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting:	
Caribou:	
Unit 10—Unimak Island only.	No open season.
Remainder of Unit 10—No limit.	July 1–June 30.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
Moose:	
1 antlered bull	Aug. 25–Sept. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
On limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull.	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull.	Sept. 1–Sept. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Jan. 31.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
15 beaver per season.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phrases):	
No limit	Nov. 1–Feb. 28
Lynx:	
No limit	Dec. 1–Jan. 31.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28
Muskrat:	
No limit	Sept. 20–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Oct. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(13) Unit 13.

(i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with

the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence. Subsistence uses as authorized by § ____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 20. Jan. 5–Mar. 31
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn.	Aug. 10–Sept. 20.
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 25–Sept. 20
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar 31
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31
Trapping:	
Beaver:	
30 beaver per season.	Oct. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	

Harvest limits	Open season
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	

(14) Unit 14.

(i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) The Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) In Unit 14(B), bait may be used to hunt black bear between April 15 and May 31.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 14(A) and (C)—1 bear.	July 1–June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years.	Sept. 15–Oct. 10. May 1–May 25.
Coyote:	
Unit 14(A) and (C)—2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day.	July 1–June 30.
Unit 14(C)—5 hares per day.	Sept. 8–Apr. 30.
Lynx:	
2 lynx	Dec. 15–Jan 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession.	Aug. 10–Mar. 31.
Unit 14(C)—5 per day, 10 in possession.	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession.	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession.	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
Unit 14(A)—30 beaver per season.	Nov. 10–Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(15) Unit 15.

(i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and

ptarmigan may be taken only from October 1–March 1 by bow and arrow only;

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves.	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves.	Aug. 10–Apr. 30.
Wolverine:	
1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession.	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession.	Jan. 1–Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Remainder of Unit 15—No limit.	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 15 (A), (B)—No limit.	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
Unit 15 (B) and (C)—No limit.	Nov. 10–Feb. 28.

(16) Unit 16.

(i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by §____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(17) Unit 17.

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(a), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchick Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years	Sept. 20–Oct. 10. May 10–May 25.
Unit 17 (C)—1 bear every four regulatory years	Sept. 10–Oct. 10. Apr. 10–May 25.
Caribou:	
Unit 17 (A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—1 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above	Jan. 1–Mar. 31.
Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—5 caribou; however, no more than 2 caribou may be bulls	Aug. 1–Apr. 15.
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 antlered bull	Sept. 1–Sept. 20.
Remainder of Unit 17(B)—1 antlered bull; however, during the period Aug. 20—Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 20. Dec. 1–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 15.
Remainder of Unit 17(C)—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox Arctic (Blue and White Phase):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 17(A)—20 beaver per season	Jan. 1–Feb. 28.
Unit 17 (B) and (C)—20 beaver per season	Jan. 1–Feb. 28.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28

(18) Unit 18.

(i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages

flowing into a Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total Unit harvest of 130 bulls has been reached in either or both hunts administered by the Board or ADF&G.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzitvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage; and those portions contained in the Kanektok and Goodness drainages—1 antlered bull.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered moose. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28..	Sept. 5–Sept. 25.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above.	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra)::	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Mar. 31
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–May 30.
Trapping:	
Beaver:	
No limit	Nov. 1–June 10.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Lynx:	
No limit	Nov. 10–Mar. 31
Marten:	
No limit	Nov. 10–Mar. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Mar. 31.

(19) Unit 19.

(i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.25 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by §____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 19 (A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear.	Sept. 1–May 31.
Remainder of Unit 19 (A), (B), and (D)—1 bear every four regulatory years.	Sept. 10–May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou.	Aug. 10–Mar. 31.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou.	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep:	
1 ram with ⅞ curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1–Jan. 10 and Feb. 1–Feb. 5.	Sept. 5–Sept. 25. Jan. 1–Jan. 10. Feb. 1–Feb. 5.
Unit 19(B)—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull.	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull.	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	

Harvest limits	Open season
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(20) Unit 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River:

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § ____ .25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision 0SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between

Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30.	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River.	No open season.
Remainder of Unit 20(F)—1 bull.	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 antlered bull.	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only.	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and the portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 antlered bull.	Sept. 1–Sept. 20.
Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 25.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull.	Sept. 1–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx.	Dec. 1–Jan. 31.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession.	Aug. 10–Mar. 31.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and Whitetailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver.	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit.	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20—No limit	Dec. 1–Jan. 31.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No Limit.	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Remainder of Unit 20—No limit.	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(21) Unit 21.

(i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon river drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stranstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Idatarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1.

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

(D) The taking of up to three mooses per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 23 (A), (B), (C), and (E)—1 caribou.	Aug. 10–Sept. 30.

Harvest limits	Open season
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 21(A)—1 antlered bull.	Sept. 5–Sept. 30. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull.	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25. Feb. 1–Feb. 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5–Sept. 25.	Sept. 5–Sept. 25. Feb. 1–Feb. 10.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 21(E)—No Limit	Nov. 1–June 1.
Remainder of Unit 21—No Limit.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(22) Unit 22.

(i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) Snowmachines may be used to take caribou and moose in Unit 22 during established seasons; however, shooting from a snowmachine in motion is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 22(C)—1 bear every four regulatory years.	Sept. 1–Oct. 31. May 10–May 25.
Remainder of Unit 22—1 bear every four regulatory years.	Sept. 1–Oct. 31. Apr. 15—May 25.
Caribou:	
Unit 22 (A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 22(A)—1 antlered bull.	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull.	Sept. 1–Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
No limit	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 22 (A) and (B)—50 beaver.	Nov. 1–June 10.

Harvest limits	Open season
Unit 22 (C), (D), and (E)—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(23) Unit 23.

(i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats or snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1—Jun. 10.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear.	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years.	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou:	
5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Sheep:	
Unit 23—that portion south and east of the Noatak River, and west of the Cutler and Redstone Rivers (excluding the upper Noatak River Canyon/Sekuiak Bluffs), and including the Igichuk Hills (that area west of the Noatak River and south of Noatak Village, 1 ram with 7/8 curl horn or larger. A State registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10–Sept. 20.
Unit 23—that portion south and east of the Noatak River, and west of the Cutler and Redstone Rivers (excluding the upper Noatak River Canyon/Sekuiak Bluffs), and including the Igichuk Hills (that area west of the Noatak River and south of Noatak Village, 1 sheep. A State registration permit is required. The hunt will be closed when 30 sheep have been taken. From Oct. 1–Apr. 30, public lands will be closed to the taking of sheep, except by rural Alaska residents of Unit 23 living north of the Arctic Circle.	Oct. 1–Apr. 30.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep.	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	

Harvest limits	Open season
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 1–Jan. 15.
Wolf:	
5 wolves	Nov. 10–Mar. 31.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver.	Nov. 1–June 10.
Remainder of Unit 23—30 beaver.	Nov. 1–June 10.
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
3 lynx	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(24) Unit 24.

(i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear.	Sept. 1–May 31.
Remainder of Unit 24—1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.

Harvest limits	Open season
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose, may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except that portion of the John River within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(25) Unit 25.

(i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area, which encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6

miles where the stream forks into two roughly equal drainages; the boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10–Sept. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger.	Oct. 1–Apr. 30. Aug. 10–Sept. 20.
Unit 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only.	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull.	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Remainder of Unit 25(B)—1 antlered bull.	Aug. 25–Sept. 25. Dec. 1–Dec 15.
Unit 25(C)—1 antlered bull.	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose.	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct 1.	Sept. 1–Mar. 15.

Harvest limits	Open season
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx.	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves.	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—25 per day, 30 in possession.	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 25(C)—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1–Jan. 31.
Remainder of Unit 25—No limit.	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb 28.
Remainder of Unit 25—No limit.	Nov. 1–Mar. 31.

(26) Unit 26.

(i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1—Aug. 31 and from Jan. 1—Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats and snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear	Sept. 1–May 31.
Remainder of Unit 26—1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30.	July 1–June 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1–Apr. 30.
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.

Harvest limits	Open season
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with ⅞ curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandalar River drainage—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26((B) Remainder and (C)—1 moose.	Aug. 1–Dec. 31.
Musk Oxen:	
Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Oct. 1–Nov. 15. Mar. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

Dated: May 12, 1994.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 94–13223 Filed 5–26–94; 12:19 pm]

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federal register

Friday
June 3, 1994

Part IV

National Credit Union Administration

12 CFR Part 701

Organization and Operation of Federal Credit Unions; Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Interpretive Ruling and Policy Statement 94–1—Chartering and Field of Membership Policy (IRPS 94–1).

SUMMARY: This final interpretive ruling and policy statement ("IRPS") is the result of NCUA's policy of reevaluating all its regulations periodically to determine whether change is warranted. The NCUA Board approved publication of a proposed IRPS on chartering and field of membership after its July 15, 1993 open meeting; the public ultimately was given 180 days to submit comments. This final IRPS 94–1 reflects a full evaluation of those comments; substantial changes as outlined below were made to the proposal. This IRPS 94–1 replaces IRPS 89–1.

The NCUA is also issuing a final amendment to update Part 701.1 of its Rules and Regulations entitled "Organization and Operations of Federal Credit Unions".

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, National Credit Union Administration, (404) 396–4042, 7000 Central Parkway, Suite 1600, Atlanta, Georgia 30328.

SUPPLEMENTARY INFORMATION:

Background

I. The Proposed IRPS

On July 28, 1993, the NCUA Board published a proposed interpretive rule and policy statement (IRPS) updating chartering and field of membership policies, and also published a proposed amendment to Section 701.1 of the NCUA Rules and Regulations (12 CFR 701.1), to reference the updated IRPS. The proposal was issued with a 90 day comment period that was extended by the NCUA Board for an additional 90 days due to a public request. The proposed IRPS was designed: (1) To update policies on low-income credit unions; (2) to streamline the charter application process; (3) to address credit unions undergoing corporate and military unit restructuring; (4) to clarify NCUA policy on the "operational area" requirement for select group expansions; and (5) to make certain other minor or technical changes to modify or clarify NCUA policy.

The Board also requested specific comment on the following issues: (1) Whether NCUA should permit credit union chartering and field of membership expansions based on associational groups formed for the sole purpose of making credit union service available to low-income persons, such as is now permitted for existing credit unions seeking to extend service to senior citizens; (2) Whether NCUA should permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition found in Part 701.32 of NCUA's Rules and Regulations; (3) Whether there should be special procedures for permitting select group expansions "in the public interest;" and (4) Whether NCUA should establish a streamlining "file and serve" procedure for select group expansions of fewer than 50 potential members.

II. Summary of Comments Received

One hundred and thirty-nine public comment letters were received. Comments were received from seventy-eight federal credit unions, six state chartered credit unions, one state regulator, thirteen state credit union leagues, seven national credit union trade organizations, and two individuals.

The Board also received comments from thirty-two banks and banking associations. Briefly summarized, the bank commenters argued that federal credit unions are permitted to expand only within a single common bond, and that federal credit unions should be subject to tax like banks. The NCUA Board, in currently ongoing litigation, has repeatedly stated its disagreement with banking organizations' position on various matters regarding field of membership issues. The question of taxation has been decided by Congress and the President.

In general, the credit union commenters partially supporting or opposed to the proposal argued that NCUA should go even further in liberalizing chartering and field of membership policy. For example, the vast majority of commenters favored deleting operational area requirements altogether for select group amendments. Though the credit union community's desire for more flexibility in accepting new members is understandable, the NCUA Board is unwilling to make the significant changes suggested in operating rules that have served the community well for so long. The Board, in the final IRPS, has adopted a more conservative approach to change.

At the same time, the Board has noted the continuing decline in the number of credit unions and the lack of new chartering activity in recent years. The final IRPS makes significant changes to existing policy to encourage new chartering activity, particularly in low-income areas.

THE ISSUES AND NCUA BOARD DECISIONS

I. Field of Membership Changes To Promote Service to Low-Income Persons

A. Comments in General

The Board's suggestions for significantly liberalizing field of membership policy to encourage service to low-income persons by any sector of the credit union movement generated a great deal of interest.

The first suggestion was to permit credit union chartering and field of membership expansion based on associational groups formed for the sole purpose of making credit union service available to low-income persons, much as is now permitted for existing credit unions seeking to extend service to senior citizens. Nineteen commenters approved of this proposal as a proper method to increase financial services to low-income individuals. However, one association commenter stated that in the case of a low-income credit union, it would oppose a low-income "association" seeking to align with such a non low-income credit union if the association's constituents were already eligible for membership in an existing low-income credit union, unless the latter did not object. This commenter asked whether it was NCUA's intent that the individuals of this associational group themselves be low-income or simply have a stated interest in making services available to low-income persons. This commenter also asked what method of income documentation NCUA would require for the association and whether all of the proposed members would have to qualify as low-income or simply a majority. Four commenters opposed this proposal as unnecessary.

The Board also requested comment on a proposal to permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition of Part 701.32 of NCUA's Regulations. Thirty commenters approved of this proposal. Most of these commenters believed that

it would allow healthy credit unions to help low-income individuals. Two commenters stated that in many cases credit unions are the only financial institutions that are willing to work with low-income individuals in an effort to promote fiscal responsibility. Two commenters believed there was reason to limit this proposal to non-community credit unions. These commenters believed there may be instances when it would be appropriate for a community credit union to serve a non-contiguous low-income community. Furthermore, these commenters suggested that any credit union wishing to serve a low-income group or community should include in its business plan details on how it will serve the group and periodically review how successful its efforts have been.

Eight commenters opposed the proposal. Three commenters believed there would be a potential for the credit union to "cherry pick" low-income neighborhoods without truly being dedicated to its development.

Two commenters suggested that the credit union maintain separate accounting records for the low-income addition, and at a later date, if the low-income addition was successful, it could be spun off and stand on its own. One commenter suggested that "persons participating in programs to alleviate poverty or distress" in a designated community also be considered an acceptable group for additions. Five commenters suggested it might be possible to charter new community development credit unions that would immediately operate under the agency's conservatorship policies—perhaps for a minimum period of three years. The commenters also suggested that under NCUA's broad conservatorship powers, NCUA could hire the services of a nearby existing credit union under a management contract to operate the new credit union.

One commenter stated that minimum requirements should be instituted for any non-low-income credit unions seeking permission to enter a low-income area to ensure that the community will be adequately served. One commenter suggested that a non low-income credit union be required to provide status reports on its service to such a low-income group. One commenter recommended that no expansion should be granted unless it could be demonstrated that there would be no adverse material impact on existing low-income credit unions in the area, or groups in the process of chartering a low-income credit union. One commenter stated that before an expansion was granted, the federal credit union should be required to perform a study of the credit and depository needs of the low-income group.

One commenter supported using the existing limited income designation criteria as defined by NCUA to allow existing religious-based credit unions to grant access to credit union service in their immediate financially underserved communities. One commenter recommended allowing minority chambers of commerce or other associations of minority and economically disadvantaged business people, along with their respective employees, to qualify for charters.

B. NCUA Board Decision

The Board agrees that low-income persons need expanded credit union service. To ensure that all possible means of accomplishing this end can be used, the final IRPS:

- Permits chartering associational low-income federal credit unions, where the association is organized solely for the purpose of providing credit union service to low-income persons.
- Permits a low-income federal credit union, whether associational or community based, to include in its charter, occupational, associational, and community common bond groups without regard to location. The credit union will have to monitor such additions to its base common bond, however, to ensure that the credit union remains qualified for a low-income credit union designation.
- Permits a federal credit union of any type—occupational, associational, community, or multiple group—to include low-income groups in its field of membership, without regard to the groups' location, either by forming an association which is organized solely for the purpose of providing such service or by including a community group which could be the basis for chartering a low-income credit union.

The Board shares some commenters' concerns that this policy change may be used to "cherry pick" by meeting the credit needs of a relatively well-off portion of a low-income community while leaving those most in need of service with nothing. The Board will institute special reporting requirements and special examination procedures for any credit union including a low-income group in its field of membership to ensure that adequate credit union services are provided to *all* persons in the community.

The Board sees no limitation in the Federal Credit Union Act preventing this policy change. While true that NCUA has generally refrained from combining community-based common bonds with occupational and associational common bonds, the reason for that limitation has been a concern for the safe and sound development of credit unions. The language of Section 109 of the Federal Credit Union Act, 12 U.S.C. 1759, which states "Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district," does not require segregation of community groups from other kinds of common bonds. The difference in wording for community based common bond seems to have arisen from the fact that the bond was more difficult to describe adequately. The "or" between the "common bond" provisions and the community description is no different from the "or" between "occupation" and "association", which the Board has long concluded permits combining occupational and associational common bonds in a single federal credit union, and which is consistent with the word's common usage.

Moreover, in IRPS 89–1, the Board described all three groupings—occupational, associational, and community—as "common bonds" without distinction, and in the case of distress mergers permitted intermingling of all three common bond types.

Finally, there is nothing in the evident purposes of the Act which suggests that community groups are necessarily to be treated differently from other common bonds. Functionally, all three common bonds perform an identical role—to help maintain in credit union members the sense of belonging and ownership that is so crucial to credit union success.

Other commenter suggestions—such as providing assurances that existing low-income credit unions are not overlapped and extending the agency's conservatorship power to help start low-income credit unions—can be implemented under existing policy where appropriate.

II. Other Issues Relating to Low-Income Federal Credit Unions

A. Comments

Four commenters approved of updating low-income credit union polices based on the revised regulatory definition. Two commenters believed that low-income credit unions should have access to the CDCU Revolving Loan Program immediately upon beginning operation. One commenter suggested that community groups be

able to seek a preliminary determination of a low-income designation before final submission of a charter package.

One commenter urged that associational groups proposing to start low-income credit unions not be required to demonstrate voting, dues-paying membership structures because, among other things, it would hurt church based associational groups.

B. NCUA Board Decision

The Board agrees with these suggestions. The final IRPS:

- Updates the provisions on low-income credit unions to reflect recent changes in the Rules and Regulations
- Eliminates the voting and dues-paying requirements for recognition of an associational common bond
- Provides for preliminary review of the low-income designation.

Part 705 of the NCUA Rules and Regulations (12 CFR 705.0 *et seq.*) currently provides qualifying newly chartered credit unions with immediate access to the CDCU Revolving Loan Fund.

III. Streamlining the Process for New Charter Applications

A. Comments

Six commenters approved the streamlining process for new charter applications. Four commenters believed that the amount of time that passes between the day a potential credit union submits a charter application to NCUA for approval and the day the application is actually approved or denied was acceptable. Two commenters believed the time frame for chartering was unacceptably lengthly. One commenter suggested that an acknowledgment of receipt of the chartering application "be sent to the organizers in a timely fashion" preferably within 10 days.

One commenter stated that it would facilitate chartering if groups were able to obtain tentative approval of their fields of membership early in the process. This commenter also believed that early submission of NCUA 4012 may also speed the process.

The proposal stated that the subscribers should be responsible for paying the cost of credit reports and background checks when applying for a credit union charter. Seven commenters agreed with this provision. Nine commenters believed that the subscribers should not be responsible for paying the cost of credit reports and background checks when applying for a new charter. Two commenters recommended that NCUA articulate the standards relied upon in disqualifying credit union organizers.

B. NCUA Board Decision

The NCUA Board agrees with these suggestions and is hopeful that the result of all the changes made will be a significant increase in new federal chartering activity. Small, vibrant credit unions, serving their members on a first-name basis and willing to take reasonable credit risks based on personal knowledge of their members' character, are a vital part of the credit union movement. Many credit unions which used to fill this niche have through their success grown to the point where credit union management can no longer make these personal judgments on each individual member: A new generation of small credit unions is needed to fill that void, particularly in the many poor inner-city and rural areas where credit needs are now largely unmet.

The final IRPS provides:

- That charter applicants will receive acknowledgment of the application's receipt in 10 business days
- That tentative field of membership approval will be given early in the process
- That early submission of NCUA 4012 will be encouraged
- That the cost of credit reports and background checks will be borne by NCUA

The NCUA Board does not believe, however, that it would be productive to establish many other absolute standards and guidelines. Each application is to some extent unique and may require somewhat different procedures and time frames. The Board believes these are best left to be worked out between the prospective credit union officials and NCUA staff.

IV. Distress Situations Caused by Dramatic Changes in Economic Conditions Within a Federal Credit Union's Field of Membership

A. Comments

The proposal would have permitted an associational, occupational, or multiple group credit union converting to a community charter as a result of significant corporate or military restructurings to maintain service to groups in its field of membership prior to conversion and to add other groups within the credit union's operational area after the conversion, but for only so long as needed to ensure the credit union's continued viability. A group consisting of all NCUA Regional Directors and the Director of Examination and Insurance would vote to determine the necessity of allowing the converting credit union to maintain the select employee groups. Eighteen commenters favored the proposal.

Four commenters believed this authority should be expanded to all community charters where continued viability is threatened by a major employer's restructuring. These commenters believed there was no reason to treat a "converting to" community charter any different from existing community charters when in both cases the threat is viability caused by similar events.

Though many commenters suggested abandoning the operational area requirement altogether (see " 'Public Interest' Addition Comments" below), one in particular urged that it at least be abandoned in distress situations. Eight commenters opposed the proposal. Two commenters stated that military credit unions should not be granted community charters except in rare cases where an isolated base is the community. These commenters believed that in a heavily populated area where there are many other credit unions already serving select groups, this proposal would grant an unfair advantage to military credit unions. Six commenters approved the special administrative approval procedure but nine objected to it.

B. NCUA Board Decision

The Board is persuaded that federal credit unions of all types need additional flexibility when faced with distress situations such as significant corporate or military restructuring. The final IRPS:

- Permits federal credit unions of all types—occupational, associational, multiple group, and community—to apply for designation as a "distressed federal credit union" and to do so regardless of whether they are converting to community charter
- Permits federal credit unions with such designations to add occupational and associational groups to their fields of membership regardless of location.

As an added assurance that the process is administered consistently and proper guidance is given, the NCUA Board will reserve to itself, at least initially, the authority to grant "distressed credit union" designations. The Board believes that, with this added requirement, there will be adequate controls in place to prevent abuse: There will be a comprehensive review by the NCUA Board prior to initial designation; groups must request service in order to be added to a distressed credit union's field of membership; the regional director must approve all expansion requests; and normal overlap procedures will apply.

V. Common Bond Issues

A. Occupational Common Bonds

1. Comments

The proposal suggested only slight modifications of current policy. It stated that a proposed federal credit union whose primary sponsor is a particular corporation may include the employees of that corporation who work at another location, employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations, employees of a division or majority-owned subsidiary of the parent company regardless of location, and employees of a related company (such as a person working regularly for an enterprise under contract and possessing a strong dependency relationship with the sponsoring enterprise). Each group to be served (e.g., majority-owned subsidiaries, contractors) was to be separately listed.

One commenter objected to the proposal that each group to be served must be separately listed. This commenter suggested that NCUA be more lenient. Another commenter requested that if an occupational credit union furnished evidence of its parent company's preference for one credit union, that credit union should be allowed to describe its field of membership to include the parent and all other companies under common control. One commenter stated that the components of a field of membership definition should be limited to legal entities.

One commenter stated that the Chartering Manual does not state procedures necessary for a credit union to keep its existing membership, if a company or a division has been sold. This commenter believes that if a company or division is sold to a company which has a credit union, then the original credit union loses the field of membership after the sale; otherwise, service should be allowed to continue.

2. NCUA Board Decision

The NCUA Board agrees that the wording of this portion of IRPS 89–1 pertaining to business relationships is in need of some revision. The final IRPS has been rewritten to provide more clarity. However, the Board does not see a need to broaden the occupational common bond definition in general at this time.

The Board does believe, however, that it is a disservice to cut off service to groups which are divested from a sponsoring firm. The final IRPS permitted continued service if the group desires it.

Finally, it is clear that some in the credit union community have misunderstood why the NCUA Board proposed requiring listing of subsidiary entities included in a common bond. The agency is in the process of establishing a field of membership database for internal monitoring of overlaps. Federal credit union listing of all subgroups would greatly enhance the reliability and overall usefulness of the database. But the NCUA Board sees no need to impose this requirement on a federal credit union which finds that process overly burdensome, and the final IRPS has deleted this portion of the proposal. Such a credit union should understand, however, that if a specific group is not mentioned in its charter, and the group in good faith states in a request for service from another credit union that it does not have credit union service available (as often happens with new subsidiaries of sponsoring groups), an overlap may inadvertently be permitted without full consideration for the overlapped credit union's interests. If the overlap is discovered after the other credit union has begun service, it is likely that, in the interests of the group and the other credit union, NCUA will permit the overlap to continue.

B. Associational Common Bonds

1. Comments

The proposal clarified that a federal credit union seeking to include an association in its field of membership may only include natural persons who pay dues and have voting rights or hold office in the association. Eight commenters supported this change. Twenty-one commenters opposed the proposal. In general, these commenters believed that not all natural person associations require a member to pay dues. A few commenters stated that the proposal would harm church associations that have members that do not pay dues. Four commenters stated the proposal would harm low-income cooperatives. One commenter stated that the collection of dues for an associational group may be entirely irrelevant to the group's purpose or mission. One commenter stated that this requirement can not be reasonably monitored by a federal credit union.

The proposal also clarified that a federal credit union's field of membership has to be updated and approved by NCUA when an association changed its bylaws to modify the scope of those eligible for membership. Six commenters approved of this clarification. One commenter stated that without this limitation an associational credit union would be allowed to change to an open field of membership. Thirteen commenters disapproved of the clarification. Six of these commenters believed that if an association changed its bylaws frequently it could cause an administrative nightmare for the credit union and NCUA if the charter had to be amended every time the bylaws changed. One commenter believed the main concern should be whether the association in question was a viable functioning organization. This commenter believed that an association with membership qualification requirements, bylaws and meetings should be defined as a functioning organization.

The proposal removed the requirement that students must join the credit union prior to family members becoming eligible. Five commenters agreed with this change.

One commenter stated that the final IRPS should be modified to allow for inclusion of an entire association in a federal credit union at a higher level if that level provided broad based services which were not available at a lower level.

2. NCUA Board Decision

The NCUA Board agrees that the dues-paying and voting rights requirements of the proposal could be unfair to some bona fide associations. The final IRPS lists these elements as factors to be considered, not as requirements.

The Board has also attempted to clarify in the final IRPS the ambiguities noted by some of the commenters.

The Board does not agree, however, that it should alter its present policy in favor of service to associations at the lowest possible level, or that it is appropriate to allow associations to modify portions of their bylaws which dramatically change the make-up of membership without agency review. The final IRPS maintains these provisions as in the proposal.

VI. Select Group Addition Issues

A. Comments

A number of comments were received on the various proposed changes to NCUA's select group addition policy. They are best discussed as a group.

1. "Public Interest" Addition Comments

The Board requested comment on a limited "public interest" procedure by which NCUA might approve a federal credit union expansion to include a group outside the operational area of a

home or branch office, if such action was in the interest of making quality credit union service available to all eligible groups who wish to have it, and if doing so would not have a significant adverse effect on the safe and sound operations of credit unions. Any federal credit union seeking such an expansion would need to provide certain documentation, including a summary of the views of each credit union with a home or branch office within a 25 mile radius as to whether each has agreed to inclusion of the group in the applying credit union's field of membership, and if the credit union refused, the reasons for the refusal.

Thirty commenters supported the concept of the "public interest" proposal. These commenters generally believed that the proposal would provide more people with credit union service. However, most of these commenters believed the proposal's operational area requirement was unnecessary. Furthermore, sixteen commenters stated that the proposal's documentation requirements were so onerous that it would discourage most credit unions from trying to use the procedure. Six commenters opposed this proposal.

One commenter believed that the only use for the "public interest" procedure should be to provide an exception to the rules for credit unions experiencing a loss of members due to some extraordinary circumstances, such as a base closing or a corporate restructuring. This commenter believed the test for a "public interest" procedure should be based on: (1) The demand for credit union service; (2) the capability of the credit union to provide services; and (3) the level of membership necessary to sustain the affected credit union.

2. "Operational Area" Comments

NCUA has traditionally focused multiple group field of membership additions around the "operational area" of a home or branch office. This policy was designed to ensure a satisfactory level of commitment and service to the groups included in the field of membership, while also minimizing instances of overlap and deterring territorial stakeouts by overly aggressive credit unions. However, in response to new technologies and innovations, the proposal clarified operational area requirements. The first clarification was that for purposes of a field of membership expansion the "standard" operational area will be considered an area within a 25 mile radius of a home or branch office, but that this standard may be extended for rural areas. Six commenters believed the proposed operational area was reasonable and approve of it. Four other commenters agreed in general with the definition but believed that there should be more leeway for rural areas.

Forty-one commenters objected to the 25 mile operational area as outdated in light of current technology. Thirty-seven commenters stated there should not be any operational area. They believed that direct deposit, automated teller service, and service-by-phone, in many cases, has eliminated the need for physical access to a branch. Five commenters believed operational area should just be one of many factors to be considered in a field of membership expansion.

A few of the commenters stated that a progressive approach to the expansion of services is one based on functionality, not geography. They believed a functional approach should be based on the capacity and willingness to serve matched with a demand for those services. One commenter suggested that the determination of the operational area of a credit union should be based on whether the credit union can reasonably be expected to deliver adequate credit union service to the area. This commenter suggested that NCUA approve a field of membership expansion request if: (1) There is a clear demand for the credit union's services; (2) the credit union is capable of providing the services; and (3) other credit unions in the area are not already providing the service. Twelve commenters stated that any credit union should have the option to add select employee groups to its field of membership (without regard to operational area) if it has the financial resources to do so and there is no overlap.

3. "Shared Facilities" Comments

The proposal stated that "shared facilities" and "shared service centers" were specifically to be excluded from consideration as either a "home" or "branch" office for purposes of meeting NCUA's operational area requirement, except in unusual circumstances—e.g., where a credit union is converting an existing home or branch office to a "shared facility." Nine commenters believed this to be a reasonable position and agreed with the clarification. One commenter stated that this position would ultimately help service centers prosper and control predatory concerns from credit unions not participating in shared service center programs.

Seven commenters opposed the clarification. Several commenters believed the proposal would force some credit unions into unnecessary expenditures for "brick and mortar" facilities. Some commenters suggested that field of membership expansions be allowed around a shared branch if the credit union has a material (20%) stake in the facility. They believed shared branches were tantamount to a credit union's own property.

4. "Branch" Comments

The proposal stated that a facility which was directly and solely owned by, leased by or donated by a credit union and had credit union employees regularly on site who accept payment on shares and disburse loans was clearly a home or branch office. One commenter objected to the requirement that a branch office have a paid employee working in it. This commenter believed this section needed to be modified to include credit union volunteers.

One commenter believed that in order to facilitate growth among credit unions, NCUA should reconsider its position that "the addition of a new select group alone is not enough to justify a proposed home or branch office."

One commenter believed the definition of branches should be expanded to more closely identify and define the difference between an "open branch" and a "closed branch." This commenter stated that an open branch should be identified as one where members from any company or group could have free access and that a closed branch should be identified as one that is located within a sponsor's facility that is accessible only to employees of that group. This commenter believed that taking on additional small employee groups using a close branch as the base in determining the 25 mile radius should not be permitted.

B. NCUA Board Decision

The NCUA Board is not prepared to jettison the "operational area" limitation or to make substantial changes in how that limitation is defined. The requirement has served credit unions well and remains vital. Some of the wording in the final IRPS has been changed to make the concept more adaptable to the variety of credit union service outlets, however. "Home or branch office" has been changed to "service facility," for example, and the requirement to have an "employee" on site has been changed to "representative" to accommodate the possibility of volunteers.

However, the final IRPS does not include provisions for a "public interest" field of membership expansion. Moreover, the Board does not believe that technology has reached the point where access to a facility where business can be transacted by

interaction with another person is unimportant. Therefore, the operational area requirement will continue to be linked to the credit union's ability to provide service by such means. Finally, the Board cannot, without substantially more experience, allow "shared service centers" and other similar kinds of group service arrangements to be considered "service facilities" for select group expansion purposes; the effects of such a change are too unclear at this point. The final IRPS therefore excludes from the definition of a "shared facility" locations at which service is provided to a significant number of different credit unions' members.

VII. Community Charters

A. Comments

Two commenters believed the proposal did not address the concerns of community credit unions. The proposal clarified that a community credit union's operational (service) area was to be defined by its boundaries. Four commenters agreed with this clarification. Four commenters believed that the authority to add new groups outside community boundaries should be extended to all community charters where continued viability is threatened by a major corporate or military restructuring. These commenters believed there was no reason to treat a "converting to" community charter any differently from existing community charters when in both cases the threat is viability caused by similar events. Eight commenters believed any community credit union should have the option to add select employee groups to its field of membership if it has the financial ability to do so and NCUA determines that no other credit union in the area could serve the group. Four commenters suggested allowing community credit unions to merge with multiple group or associational credit unions while still continuing to serve the former fields of membership of both credit unions.

Four commenters believed NCUA should provide for the chartering of community credit unions in two non-adjacent communities. These commenters believed the granting of community charter status in one area should not prevent the credit union from continuing to serve and admit new members from existing select employee groups in a second area, or obtaining a dual community charter.

One commenter believed NCUA should make it easier to expand geographic boundaries of community credit unions by eliminating the requirement of showing a "commingling of the two communities." This commenter believed this requirement was no longer realistic because electronic transactions have taken over in the marketplace.

B. NCUA Board Decision

The Board believes the final policy statement addresses the needs of community charters. In response to the advent of new technologies in communication and the evolving character of communities, the Board has slightly revised the definition of a community common bond. A community charter must continue to be limited to "a well-defined neighborhood, community, or rural district." However, a community will be defined as a single, well-defined area where residents interact. To meet this definition, the Board has established the following common bond requirements for a community charter: the geographic area's boundaries must be clearly defined; and the applicant for a new charter or an expansion must establish that the area is recognized as a "distinct neighborhood, community or rural district." This new policy eliminates the commingling requirement while still requiring the members to interact. The final policy also clarifies that the community credit union's operational (service) area is defined by its boundaries.

As stated earlier, community credit unions may also apply for a designation as a "distressed federal credit union" and to do so regardless of whether they are converting to a community charter. These credit unions, as well as low-income community credit unions, may add select employee groups outside their operational area to their fields of membership as long as they have the financial ability to serve the group. After the credit union community has some experience with this policy, the Board will assess the wisdom of extending this option to all community credit unions.

VIII. Overlap Issues

A. Comments

The proposal clarified that NCUA may exclude from overlap protection state chartered credit unions with a field of membership so broadly defined as to include virtually everyone in a wide area. Four commenters agreed with this clarification. However, many commenters addressed other overlap issues. Two commenters supported the requirement that credit unions involved in overlap situations first attempt to resolve related issues among themselves before turning to NCUA. Three commenters stated that field of membership policy was overly liberal and permits numerous overlaps which hurt small credit unions. Eight commenters stated that overlaps between credit unions should be liberally permitted.

Four commenters believed NCUA should include a definition of the term "incidental overlap" as a further aid to the credit union community. One commenter believed the term should be defined as 3% of the potential membership of the credit union being overlapped. One commenter stated that overlaps are incidental if they do not create questions of viability for the credit union affected by the overlap.

The proposal stated that an overlap may be justified if the original credit union failed to provide quality service to the group. One commenter suggested that the Board define "quality service" and reexamine its position regarding the absence of "specialized service as not being a justification for an overlap." Seven other commenters also believed that the term "quality service" needed to be defined. They believed the term was very subjective: Did it mean the number of services, hours open, or the attitude of workers? A few of these commenters believed the lack of a definition has hurt small credit unions.

One commenter supported NCUA's intent to provide overlap protection for any type of charter if there are significant safety and soundness concerns. This commenter would expand this to include a low-income service impact test: A credit union should be protected from overlaps which would impair its ability to effectively serve low-income members of the community.

The proposal also stated that in special cases exclusionary language should be used to limit the membership eligibility of widely dispersed employees or associations. One commenter disagreed with this limitation. This commenter believed that if there was a legitimate common bond, such as a single employer or association, and no credit union was serving the group, then exclusionary language was not necessary.

B. NCUA Board Decision

The final IRPS contains the provision in the proposal removing from overlap consideration broadly based state chartered credit unions, which parallels how the agency approaches broadly based federal charters. As to most of the remaining comments, the Board disagrees with many of the suggestions. The Agency's long-standing policy is working well. The vast majority of all overlaps are consented to by the

overlapped credit union. The remainder are resolved in a way which makes the interests of the group paramount. The Board continues to believe it needs flexibility in this area. Therefore, the final IRPS does not define "incidental overlap" or "quality service."

However, the Board agrees that experience with exclusionary clauses has not been entirely satisfactory. This entire section has been rewritten in the final IRPS in the hope of limiting their use to the few situations where they are truly warranted and effective.

IX. Documentation Issues

A. Comments

The proposal attempted to streamline documentation requirements. Five commenters stated that the documentation requirements in the proposal were not burdensome. Ten commenters disagreed. Many of these commenters also believed that financial statements were unnecessary in light of periodic call reports and examinations. Four commenters believed that financial statements should not be necessary for field of membership expansions.

Two commenters noted that, for a field of membership expansion, the proposal required documentation from groups "on the group's letterhead stationery and signed by an official representative to the group." The commenters believed this has generally been interpreted to mean an officer of the employer. These commenters believed that NCUA should be flexible and recognize that not all groups are represented by the employer or have an "official" representative. They suggested that the IRPS allow the regions to accept other documentation or certification.

B. NCUA Board Decision

The NCUA Board agrees that in the vast majority of cases regional staff have sufficient financial information available to make a determination as to the economic advisability of the proposed charter change. Therefore, the requirement to submit financial statements with a charter change request has been deleted. If a regional office needs additional information, it may ask for it. The NCUA Board also agrees that the requirement for letterhead stationery can be relaxed. With regard to the requirement that an "official representative" of the group sign the letter requesting service, the Board does not believe a change in the wording is needed, but will ensure that the regional offices are instructed to be more flexible in applying the term to specific situations.

X. The Proposed "File and Serve" Procedure

A. Comments

The proposal requested comment on a "File and Serve" select group expansion procedure. It was envisioned that the procedure would permit CAMEL code 1 and 2 credit unions to begin providing service to small groups—50 persons or fewer was suggested—prior to formal NCUA approval of the expansion. Thirty-six commenters favored the procedure. These commenters believed it would allow credit unions to timely serve new groups. However, some commenters suggested an increase in the number of potential members that could be added using the procedure. One commenter inquired whether the number included family members. Four commenters recommended NCUA issue guidelines on what to do if the expansion is subsequently denied by the Region.

Eighteen commenters objected to the "File and Serve" proposal. The reasons were varied. Nine commenters stated there were no procedures for what would happen if the expansion was denied by the Region and that it would be an administrative nightmare if a denial occurred. Eight commenters believed this proposal was not justified since regulatory delay in approving expansion requests was not a problem. Six commenters believed that there would be more conflicts arising from both intentional and unintentional overlaps. Five commenters stated that regulatory approval distinguishes credit unions from banks.

Three commenters suggested any CAMEL code 1, 2 and 3 credit unions be permitted to use the file and serve procedure. One commenter suggested that NCUA implement an alternative procedure by which CAMEL code 1 and 2 credit unions should be given preference by NCUA in reviewing field of membership expansions. Two commenters specifically objected to the procedure's being tied to a CAMEL rating. Four commenters recommended that all credit unions should be able to use the file and serve procedure. One of these commenters suggested NCUA could then restrict the file and serve authority on a case-by-case basis for any credit union it had concerns about. One commenter recommended adding a requirement that the filing credit union have to state that there was no overlap or existing eligibility for membership in another credit union for the group to be served.

B. NCUA Board Decision

Many of the commenters' suggestions have been incorporated into the final IRPS. The new policy will permit well operated federal credit unions in good standing with NCUA to apply for charter amendments which authorize the credit unions to make use of a streamlined process for adding small occupational groups currently without credit union service. The initial maximum number of persons in a group to be added under this procedure has been set initially by the NCUA Board at 100. The Board may be resolution adjust that number from time to time as appropriate.

XI. Other Procedures for Reviewing Field of Membership Addition Requests

A. Comments

The proposal sought to clarify the mechanics of requesting additions to a federal credit union's field of membership. Four commenters believed that the approval time on select employee group additions was excessive. Another commenter stated that the field of membership expansion procedure was burdensome and should be streamlined. Two commenters supported NCUA's goal of approving or denying field of membership expansion requests within the "10 business day or less" time frame.

One commenter stated that, in regard to charter amendments, once NCUA approves one, the board of directors of the credit union should not subsequently have to adopt it to make it effective.

Two commenters stated that pre-notification of a proposed field of membership expansion in another credit union's operating area should be a common courtesy. Three commenters believed the final IRPS should provide at a minimum for some form of publication and hearings or period of comment relative to an expansion of any credit union's field of membership.

B. NCUA Board Decision

The NCUA Board believes that a ten-business-day turnaround for field of membership amendment requests is reasonable. All regions have automated the review process so that this time frame should be exceeded only in extraordinary cases. The Board strongly believes, however, that a federal credit union's board needs to be involved in the process—after all, the board is responsible for the institution's overall direction and control. There are adequate procedures a federal credit union can put in place to ensure that needed board oversight can be

maintained without delaying initiation of service to a group.

The Board also disagrees that a public notice procedure should be implemented. The overlap procedures now in place provide adequate safeguards.

XII. Federalism Concerns

A. Comments

The proposal would permit state-chartered credit unions that are converting to a federal charter and that had an established history of being able to serve multiple groups outside of its operational area to continue to serve these groups without regard to the operational area requirements normally applicable to new federal multiple group charters. Three commenters supported the change but suggested that the concept of operational area be discarded in favor of non-geographic criteria. One commenter opposed relaxing the rules for converting state charters.

B. NCUA Board Decision

The Board believes that, with respect to converting state charters, where the commitment to the group and the ability to provide quality service have been demonstrated, there is no need to impose the operational area requirement. The final IRPS maintains this portion of the proposal. Moreover, the IRPS establishes the same flexibility for an occupational, associational, and multiple group federal credit union converting to a community charter.

XIII. Miscellaneous Matters

A. Staff Leasing

1. Comments

The proposal attempted to clarify NCUA's policy on staff leasing arrangements. The proposal stated that where the requirements of existing policy were met, the employees leased to a firm listed in a federal credit union's field of membership might be added as a common bond expansion. Where those requirements were not met, the elements of a select group expansion to serve employees of the leasing company had to be met. When a leasing company was to be included in a credit union's field of membership, the company had to identify each client and work location served by the leasing company.

Four commenters favored the leasing clarification. Five commenters disapproved of the clarification. These commenters believed that the requirement for specific delineation of each separate company that was a client of the employee leasing firm was both impractical and impossible from an operational standpoint.

2. NCUA Board Decision

On reconsideration, it is evident that general policy can be adequately adapted to the leasing company situation. Therefore, this portion has been deleted from the final IRPS.

B. Spin-offs, Mergers, and Purchase and Assumptions

1. Comments

The proposal clarified NCUA's policy on mergers, spin-offs and purchase and assumptions. Four commenters approved of the update on spin-offs. Three of these commenters specifically approved of the voting requirements for a spin-off. Seven commenters approved of the revised merger section. Three commenters approved of the provision to allow a merged state credit union's field of membership to be served by the continuing federal credit union even if the inclusion of this field of membership would otherwise be restricted under NCUA guidelines.

One commenter disapproved of the merger policy. This commenter believed that by applying an operational area condition to distress mergers, NCUA is limiting its own range of action. This commenter further stated that a suitable merger candidate may not be located within the operational area of a distressed credit union and that it seemed wasteful to wait for emergency conditions to evolve and moot the operational area issue.

One commenter suggested that NCUA should be able to put a credit union for which it is seeking a merger partner into temporary conservatorship, which would allow public notification and bidding from interested credit unions. In addition, this commenter stated that current merger procedures were left to the discretion of each regional office and suggested NCUA give serious consideration to standardizing procedures which would give all credit unions an opportunity to bid.

Four commenters suggested allowing community credit unions to merge with occupational, associational, or multiple group credit unions while still continuing to serve the former fields of membership of both credit unions. Two commenters requested that with respect to mergers, the final IRPS should clarify that when a state chartered credit union is merged into a federal credit union, the federal credit union would be allowed to retain the merged state chartered credit union's select employee groups, regardless of operational area, in order to assure the vitality of the federa credit union after the merger. Another commenter agreed with this suggestion and would expand it to all mergers, including mergers between federal credit unions.

2. NCUA Board Decision

The NCUA Board agrees that operational area limitations should not be an obstacle to merger of credit unions in distress situations, and believes this was Congress' intent in giving NCUA emergency merger authority. The Board has therefore interpreted Section 205(h) of the Federal Credit Union Act (12 U.S.C. 1785(h)) to permit authorizing as emergency mergers what have become known since IRPS 89–1 as distress mergers.

For the reasons stated earlier, however, the Board does not believe that the operational area limitation should be discarded entirely or that exercise of NCUA's conservatorship authority should become a standard part of the merger process.

C. Removal of Groups

1. Comments

The proposal clarified NCUA's policy on the removal of groups from a federal credit union's field of membership. Four commenters agreed with the clarification. One of these commenters suggested allowing the removal of a group when it does not respond to a federal credit union's repeated attempts to contact them.

2. NCUA Board Decision

The final IRPS incorporates this suggested change.

D. School Systems

1. Comments

The proposal clarified that employees of different school systems and different government units do not have the same primary sponsor. Therefore, the addition of the employees of a particular school district by a federal credit union serving employees of an adjoining school district would have to be done under the select group addition procedures. Three commenters concurred with this clarification. Two commenters disagreed with this proposal. They believed that school employees in different school districts may share the same common bond and they should be added under the common bond procedure.

2. NCUA Board Decision

The final IRPS deletes discussion of school systems. They will be analyzed under general common bond policy In

the vast majority of cases, different school systems will be considered different common bonds.

E. Industrial Parks

1. Comments

The proposal suggested modifying existing policy to permit field of membership expansions to include all employees of office complexes, industrial parks, shopping centers and similar establishments upon request from the leasing agent or similar authoritative figure. No overlap protection would be given to the expanding credit union and exclusionary clauses would be used to prevent injury to those credit unions serving a portion of these employees. Sixteen commenters favored this proposal. One commenter believed NCUA needs to identify other contacts beside the leasing agent.

Three commenters opposed this modification. One commenter stated that if NCUA adopted this modification, it should ensure that no overlap protection was given to the expanding credit union and that exclusionary language was incorporated into the bylaws of the expanding credit union to prevent possible injury to other credit unions which served the same employees. One commenter stated that this modification would cause numerous overlaps in fields of memberships.

2. NCUA Board Decision

The Board has decided to adopt this proposal with a modification. Although the proposal stated that exclusionary clauses would be used to protect overlapped credit unions, the Board believes that the member, in such cases, should have the ability to use the credit union which best serves his/her needs. In many cases it might be the industrial park type credit union that is more attractive to the individual. Therefore, in general, no overlap protection will be given to the credit union with the industrial park or similar complex in its charter. However, the regional director may, for safety and soundness reasons, provide overlap protection or require exclusionary clauses to prevent significant economic injury to other credit unions serving a portion of these employees.

Although NCUA has not specifically identified parties other than the complex leasing agent or owner, the final IRPS provides sufficient flexibility in this matter.

F. Outside Vendors

1. Comments

The proposal provided guidance on the safety and soundness concerns NCUA had with a credit union using outside parties, insurance agents and car dealers, among others, to recommend select group expansions. Three commenters approved of this addition. One commenter stated that this guidance should be expanded to include discussion of indirect lending.

2. NCUA Board Decision

The final IRPS includes the discussion on outside vendors and has been expanded to include indirect lending.

G. Approval of Officials

1. Comments

The proposal clarified that NCUA must approve all prospective officials and management personnel of a newly chartered credit union during the first two years. A few comments opposed this provision.

2. NCUA Board Decision

The Board has adopted the proposal in the final IRPS since the requirement is statutory; the reason for its inclusion in the IRPS is to be a reminder to credit union officials.

H. Appeal Rights

1. Comments

The proposal clarified the appeal rights for new charters and for those credit unions denied requests for a field of membership amendment, spin-offs and mergers. Eight commenters supported the appeal procedure. Nine commenters believed the appeal procedure was insufficient. Four of these commenters requested that appeals be sent directly to the central office and bypass the region. One commenter questioned whether central office staff would act independently of the regional director. One commenter stated the proposal was unclear on what rights of appeal an overlapped credit union had involving the field of membership of another credit union.

The appeal process in the proposal did not include a provision for oral argument. Six commenters agreed that oral argument before the Board was unnecessary. Fourteen commenters disagreed.

One commenter suggested the proposal clarify that a resubmission or additional information for consideration to the Regional Director within 90 days of a denial should be considered a new request for purposes of the appeal time limit. Furthermore, the commenter stated, if the resubmission was denied, the credit union should then have another 60 days to appeal.

2. NCUA Board Decision

The Board is currently undertaking a complete review of its appeal process. The final IRPS makes the agency's standard appeal process applicable.

I. Professional Organizations

1. Comments

The proposal included language to minimize potential conflicts of interest when adding certain professional organizations to the field of membership of a federal credit union. Four commenters concurred with the guidance provided when adding a professional organization to a field of membership.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

J. Corporate Federal Credit Unions

1. Comments

The proposal clarified that corporate credit union chartering and field of membership issues were handled by the Office of Examination and Insurance. Four commenters agreed with the proposed change.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

K. Appendix C—Type of Membership Classification System

1. Comments

One commenter stated the classification was fixed at the time of chartering and it was his understanding that it never changed. Furthermore, in recognition that the membership composition of a credit union can undergo substantial change over time, this commenter suggested a procedure be created to provide classification changes. Otherwise, this commenter believed classification related data would become increasingly flawed.

2. NCUA Board Decision

Since the coding is used for internal analytical purposes, Appendix C has been deleted from the final IRPS. As a note, the codes are changed periodically by NCUA staff.

L. Format of the Manual

1. Comments

One commenter was concerned with the terminology "field of membership

expansion." This commenter believed that all changes in the field of membership were not for the purpose of expansion and some field of membership "modifications" were based on considerations other than the mere decision of a credit union to expand. This commenter recommended replacing the term "expansion" with "modification." Two commenters believed the manual should be reorganized so it would be more accessible to the user.

2. NCUA Board Decision

The Board agrees that not all field of membership changes are expansions and therefore has replaced the term "expansion" with the term "amendment." The format of the proposed IRPS has been modified substantially in the final version. Additionally, the IRPS, when put in the form of a manual, will be indexed to make it easier to use.

Regulatory Procedures

Regulatory Flexibility Act

As was noted in the proposed IRPS, the NCUA Board has determined that changes to NCUA policy resulting from adoption of the IRPS will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The changes in the final IRPS clarify existing policy rather than create new restrictions. Therefore, a regulatory flexibility analysis has not been performed.

Paperwork Reduction Act

Paperwork requirement should decrease under the final IRPS. The information collection requirements contained in the IRPS have been submitted to the Office of Management and Budget (OMB) for approval. OMB is in the process of reviewing these requirements. A notice of OMB approval will be published in the **Federal Register** upon its receipt. Any comments regarding collection requirement should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503; Attn.: Gary Waxman.

Executive Order

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final IRPS makes no significant changes with respect to state credit unions and, therefore, will not materially affect state interests.

List of Subjects in 12 CFR Part 701

Chartering, Conversions, Credit Union, Field of Membership Addition, Mergers by the National Credit Union Administration Board on May 12, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701, supersedes 89–1 and establishes the following IRPS 94–1 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1—Chartering and Field of Membership Policy (IRPS 94–1). The IRPS is incorporated into this regulation.

3. IRPS 89–1 is superseded by the following IRPS 94–1:

[Note: The following ruling will not appear in the Code of Federal Regulations.]

CHAPTER 1—FEDERAL CREDIT UNION CHARTERING

I—Goals of NCUA Chartering Policy

NCUA's chartering policies are directed toward achieving three goals:

- to uphold the provisions of the Federal Credit Union Act concerning granting federal charters
- to promote credit union safety and soundness
- to make quality credit union service available to all eligible groups who wish to have it.

NCUA may grant a charter to any group or combination of groups desiring credit union service where it finds:

- the group or groups possess an appropriate common bond;
- the subscribers are of good character and are fit to represent the group; and
- establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other federal law or public policy, in deciding if a charter should be approved.

II—Common Bond

Congress, in the Federal Credit Union Act, has recognized three types of federal credit union common bonds—occupational, associational, and community. A federal credit union may also consist of a combination of occupational, associational, and, in certain limited circumstances, community groups. For example, NCUA may charter a federal credit union consisting of employees of a local school district and members of a church group.

The Federal Credit Union Act and NCUA recognize that individual groups have their own common bond. All of the groups belonging to one particular credit union included in Section 5 of the credit union's charter make up the credit union's field of membership. If the charter is granted, the federal credit union will only be able to grant loans and provide services to persons within the groups defined in the field of membership.

If a federal credit union later wishes to add persons to its field of membership, it must comply with the procedures set forth in Chapter 2.

II.A—Occupational Common Bonds

II.A.1—General

A federal credit union may include in a single occupational common bond, regardless of location, any and all persons who share that common bond. NCUA permits a person's membership in an occupational common bond to be established in a number of ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an occupational common bond of employees of the entity.
- Employment in a corporation or other legal entity with an ownership interest in or by another legal entity makes that person part of an occupational common bond of employees of the two entities.
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of an occupational common bond of employees of the two entities.

A proposed federal credit union must supply documentation from as many authorized representatives as are needed

to establish that all persons to be included in a single occupational common bond are in fact linked in one of the ways described above.

An occupational common bond must include a geographic definitions, e.g., "employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or any of these majority-owned subsidiaries. * * *" Other acceptable geographic definitions are: "employees of * * * who are paid from * * *" or "employees of * * * who are supervised from * * *" To the maximum extent possible, setting geographic definitions by changeable corporate or division boundary—e.g., "employees of Federal Reserve District 6"—is to be avoided.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) may be separately listed.

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer group will be defined in the last clause describing the field of membership.

II.A.2—Sample Occupational Fields of Membership

Some examples of occupational group definitions are:

• "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. * * *" (common bond—same employer)

• "Employees and elected and appointed officials of municipal government in Parma, Ohio. * * *" (common bond—same employer)

• "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. * * *" (common bond—parent and majority-owned subsidiary company)

• "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida. * * *" (common bond—same employer)

• "Department of Defense civilian and U.S. Army personnel who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulation to receive and are receiving benefits or services from, that military installation. * * *" (common bond—same employer)

• "Employees of those contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington. * * *" (common bond—employees of contractors)

• "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated: * * *" (common bond—same employer)

• "Employees and teachers who work for the School District Number 3 in Austin, Texas * * *." (common bond—same employer)

• "Employees of the JKL Employee Leasing Company who are paid from Lake Charles, Louisiana * * *." (common bond—same employer)

• "Employees of JKL, Inc. and STU, Inc. working for the XYZ Joint Venture Company in Los Gatos, California * * *."

Some examples of insufficiently defined occupational groups are:

• "Employees of engineering firms in Seattle, Washington." (Not the same occupational common bond, since various firms compete against one another; names of firms must be stated; however, may be the basis for a multiple group charter.)

• "Persons employed or working in Chicago, Illinois." (No common bond; names of firms must be stated.)

• "Persons working in the entertainment industry in California." (No occupational common bond, since firms compete against one another; names of firms must be stated.)

II.B—Associational Common Bonds

II.B.1—General

A federal credit union may include in its field of membership, regardless of location, all members of a recognized association.

NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests. Except for student, church, and similar groups, all associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws and a geographic limitation. Therefore, with the exceptions noted above, applicants for an associationally-based federal credit union charter must provide a copy of the association's charter and bylaws.

Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities which clearly demonstrate that the members of the group meet and interact regularly to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's charter and bylaws.

In determining whether a group satisfies the common bond requirement for a federal credit union charter, NCUA will consider the totality of the circumstances—such as whether members pay dues, have voting rights, and hold office, whether the group maintains a membership list, the clarity of the associational group's definition and compactness of its membership, and the frequency of meetings and the interaction of members. A support group, whose members are continually changing, may not meet the criteria.

NCUA's focus with respect to chartering associational federal credit unions will be on the group's natural person members. In certain instances, however, NCUA will also allow non-natural persons (e.g., corporate sponsors, entities participating in programs to alleviate poverty and distress, or organizations of members) to be eligible for membership. It is not necessary that every non-natural person member of the group be a recognized legal entity; NCUA will consider such groups on a case-by-case basis.

Student groups—for example, parent-teacher organizations, alumni associations, and students in a trade school or other curriculum—and church groups constitute associational common bonds and may qualify for a federal credit union charter. Since such groups usually do not have a formal association charter, there is no requirement for these groups to provide a charter or bylaws.

Homeowners associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a federal charter. However, they must make a strong showing of common activities which clearly demonstrate that the group meets and interacts regularly to accomplish the objectives of the association. Furthermore, they must provide clear evidence of economic viability.

Newly-organized associations must make a similar strong showing of common activities. Experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

The associational sponsor itself may also be included in the field of membership—e.g., "ABC Association"—and will be shown in the last clause of the field of membership.

II.B.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective state dated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration prior to serving members of the association added as a result of the change. This type of field of membership amendment will require following select group amendment procedures discussed in Chapter 2.

II.B.3—Widely Dispersed Associational Charters

NCUA policy is to charter associational federal credit unions at the lowest organizational level which is economically feasible. NCUA will grant associational charters with widely dispersed memberships only where clearly demonstrated to be in the best interests of the association's members and the credit union community, and only after scrutinizing the adequacy of the applicant's common bond and the economic advisability of a more compact field of membership. NCUA, in its discretion, may require that the proposed field of membership be narrowed before granting a new charter. Amendment to include a larger portion of the association's members may be allowed at a later time, if appropriate.

Also, as with any widely dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely dispersed membership may expect overlaps, particularly at the local level, to be granted to other credit unions in the future.

In recognition of these unique circumstances, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA regional directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals. Tie votes are referred directly to the NCUA Board for decision.

II.B.4—Limits of Associational Common Bond

Except for retiree clubs and low-income groups (discussed below), associations formed primarily to obtain a federal credit union charter do not have a sufficient associational common bond. Similarly, associations based on a client-customer relationship—for example, an insurance company and its customers or a buyer's club and its members—do not have a sufficient associational common bond.

The common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the federal credit union may be considered as a multiple-group charter application. In such cases, letters of support and request for service must be provided from each separate entity.

II.B.5—Sample Associational Fields of Membership

Some examples of associational group definitions are:

- Regular members of Locals 10 and 13, IBEW, Miami, Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1994."
- "Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1994."
- "Members of the First Baptist Church in Topeka, Kansas."
- "Members of the Shalom Congregation in Chevy Chase, Maryland."
- "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1994."
- "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan."
- "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its charter and bylaws in effect on January 21, 1994." Some examples of insufficiently defined associational group definitions are:
- "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)
- "Veterans of U.S. military service." (Group is too broadly defined; no formal association of all members of the group.)

Some examples of unacceptable associational common bonds are:

- "Members of ABC Buyers Club." (An interest in purchasing does not meet associational standards.)
- "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

II.C—Community Common Bonds

II.C.1—General

Congress requires that a credit union charter based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, geographically well-defined area where residents interact.

NCUA recognizes three types of affinity on which a community common bond can be based—persons who live in, persons who worship in, and persons who work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond requirements for community charters:

- The geographic area's boundaries must be clearly defined; and
- The charter applicant must establish that the area is recognized as a distinct "neighborhood, community, or rural district."

II.C.2—Special Documentation Requirements

Information to support that the area chosen represents one well-defined area, distinguishable from the immediate surrounding areas, includes:

- political jurisdictions
- major trade areas (shopping patterns)
- traffic flows
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.)
- organizations/clubs whose membership is made up exclusively of persons within the area
- newspapers or other periodicals published for and about the area
- census tracts
- common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.)

• history of area

• in general, what distinguishes the chosen area and its residents to be distinguishable from the immediate surrounding areas and residents—some examples are old, well established ethnic neighborhoods, planned communities and small/rural towns

The following information must be provided to support a need for a community credit union:

• a list of credit unions presently in area

• a list of other financial institutions (for example, banks, savings and loan associations) that service the area

Necessary written documentation (for example, letters, surveys, studies, pledges, petitions) reflecting support for the application for or the conversion to a community credit union is as follows:

• For the residents of the area:

• Approximate number contacted.

• Number in favor of the credit union.

• Number against the credit union.

• Number who will join the credit union.

• Number who have pledged initial and/or systematic savings and amount of pledges.

• For the employers:

• Number of area employers and number of employees.

• Number contacted.

• Number in favor of the credit union.

• Number against the credit union.

• Number willing to provide payroll deductions to the credit union.

• Number willing to provide other type(s) of support to the credit union.

• For organizations (including churches):

• Number in areas and number of members.

• Number contacted.

• Number in favor of the credit union.

• Number against the credit union.

• Number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.

• letters of support from area civic leaders.

If the community is also a recognized legal entity, it may comprise or be included in the field of membership—for example, "DEF Township, Kansas" or "GHI County, Minnesota."

II.C.3—Community Service Area

The service area of a community federal credit union is the area defined in its charter, usually with north, east, south, and west boundaries.

II.C.4—Sample Community Fields of Membership

Some examples of community common bond definitions are:

• "Persons who live or work in, and businesses located in the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

• "Persons who live or work in Green County, Maine. . . ."

• "Persons who live, worship or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois. . . ."

• "Persons who live or work within a twenty mile radius of the main post office in Walnut, Illinois. . . ." (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

• "Persons who live or work within and businesses located within a ten-mile radius of Washington, DC." (Not a recognized neighborhood, community, or rural district.)

• "Persons who live or work in the industrial section of New York, New York." (Not a recognized neighborhood, community, or rural district.)

II.D—Multiple Occupational/ Associational Common Bonds

II.D.1—General

NCUA may charter a federal credit union to serve a combination of distinct, definable occupational and/or associational common bonds. For a common bond which will constitute a majority of the federal credit union's field of membership, the requirements for occupational and associational fields of membership apply. Any other group constituting an occupational or associational common bond to be included within the federal credit union's field of membership must be within what will be the credit union's operational area.

A proposed federal credit union's operational area is the area which, as determined by NCUA in its sole discretion, may reasonably be served by the service facilities that will be accessible by the groups to be included in the field of membership when the credit union begins operation. A credit union's service facility is a place where, also as determined by NCUA in its sole discretion: (1) Shares are accepted for members' accounts; (2) loan applications are accepted or loans are disbursed; (3) a member can deal directly with a credit union representative; and (4) the service provided is clearly associated with that particular credit union. An automated teller machine or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of this Chapter.

Any members of a group who will have access to one of a proposed federal credit union's service facilities may be included in the field of membership. In addition, the group as a whole will be considered to be within a proposed credit union's operational area when:

• A majority of the group's members live, work, or gather regularly within the operational area;

• The group's headquarters is located within the operational area; or

• The group's "paid from" or "supervised from" location is within the operational area.

The following special additional requirements pertaining to multiple group applications must be satisfied before NCUA will grant such a charter:

• Each group to be included in the proposed field of membership of the federal credit union must have its own occupational or associational common bond.

• Except for employee groups in the same industrial park, shopping center or similar facility, each group must individually request inclusion in the proposed federal credit union's charter.

• The proposed federal credit union's business plan must show that the credit union will possess the financial resources and management capability to provide quality credit union service to each group.

• The proposed federal credit union must show that, when it begins operations, each group to be added will be within the operational area of a service facility to which the group will have access.

II.D.2—Sample Multiple Group Field of Membership

An example of a multiple group field of membership is: "The field of membership of this federal credit union shall be limited to the following:

1. Employees of Dupont Corporation who work in Wilmington, Delaware;

2. Partners and employees of Smith & Jones, Attorney at Law, who work in Wilmington, Delaware;

3. Members of the GHI Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1994.

II.D.3—Additional Documentation

For multiple group charters, NCUA will need the following, in addition to what is required for new charters generally:

• For each group seeking to be included in the proposed federal credit union's field of membership, the credit

union must provide a letter from the group, on the group's letterhead stationery and signed by an official representative of the group wherever possible, or if that is not possible, such other documentation or certification as the regional director may, in his or her discretion, deem appropriate, containing this information:

• The fact that the group wants to obtain service from the proposed federal credit union, the kind of service it desires and the credit union has agreed to provide, and the extent to which the group supports the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or members' newsletter, etc.

• The number of employees or members in the group.

• The proximity to the proposed federal credit union's closest service facility.

• The name of any credit union to which the group currently has access.

• The group's headquarters location and all other work locations the credit union is proposing to serve.

• If the group is eligible for membership in another credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of this chapter.

II.E—Other Persons Sharing Common Bond

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

• "Spouses of persons who died while within the field of membership of this credit union."

• "Employees of this credit union."

• "Persons retired as pensioners or annuitants from the above employment."

• Members of their immediate families."

• "Volunteers."

• "Organizations of such persons."

"Members of their immediate families" may be generally defined as deemed appropriate by a federal credit union when including this group among those to be served. To be made effective, however, the federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, Section 2, of its by-laws. NCUA approval is not necessary.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under Article II, Section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services are terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision. NCUA approval is not necessary here, either.

III—Subscribers

Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a federal credit union. The organization of federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a federal credit union should contact the NCUA regional office serving the state in which the credit union will be organized or one of the trade associations. Lists of NCUA offices and trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

A credit union organizer may be a trade association representative or a person with training and experience in chartering new federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the "subscribers"—must present to NCUA for approval a sworn organization certificate stating at a minimum:

• The name of the proposed federal credit union.

• The location of the proposed federal credit union and the territory in which it will operate.

• The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

• The initial par value of the shares.

• The detailed proposed field of membership.

• The term of the existence of the corporation, which may be perpetual.

• The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on the organization certificate may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—Viability

IV.A.1—General

Before chartering a federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a fund insuring credit union members' shares and to preserve that fund.

NCUA will conduct an independent on-site investigation of each charter application to assure itself that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) the depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

IV.A.2—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to satisfy itself as to the "general character and fitness" of the subscribers. In addition, prospective officials and employees will be the subject of credit and background investigations. The investigation reports must demonstrate their ability to effectively handle financial matters.

NCUA also needs assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

IV.A.3—Member Support

While NCUA has not set a minimum size field of membership for chartering a federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. Therefore, a charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, a small occupational group must demonstrate a commitment for significant long-term support from the employer.

The group's size is meaningful only if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's

members will join the credit union and use its services. Survey results must be based, at a minimum, on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly defined or newly established, NCUA may require a larger sampling.

IV.A.4—Present and Future Market Conditions—Business Plan

IV.A.4.a—General

The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- Mission statement.
- Analysis of market conditions—economic prospects for the group, availability of financial services from other credit unions, banks, and savings and loans.
- Summary of survey results.
- Financial services needed/desired.
- Financial services to be provided.
- How/when services are to be implemented.
- Staffing of credit union and credentials of key employees.
- Physical facility—office, equipment.
- Type of recordkeeping system, including consideration of a data processing system.
- Budget for 1st and 2nd year.
- Semiannual pro forma financial statements for 1st and 2nd year, including assumptions—e.g., loan and dividend rates.
- Goals for number of members.
- Goals for operating independently.
- Source of funds to pay expenses during initial months of operation.
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends).
- Goals for shares and loans.
- Plan for continuity—directors, committee members.
- Evidence of sponsor commitment if subsidies are critical to success of the federal credit union—evidence may be in the form of letters, contracts, or any other such document on which the proposed federal credit union can substantiate its projects.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

IV.A.4.b—Special Requirements for Community Credit Unions

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Also, the lack of payroll deduction creates special challenges in the development of savings promotion programs and in the collection of loans. Therefore, it is essential for the group to develop a detailed and practical business plan for at least the first three years of operation. The business plan should contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing, and economic data.
- Service/market strategy—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy.
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.
- Financial plan—sources and application of funds statements and pro forma balance sheet and income/expense statements and assumptions.

IV.B—Effects on Other Credit Unions—Overlaps

(This discussion pertains to new and existing charters.)

IV.B.1—Overlaps In General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every reasonable effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership of only one credit union.

New credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter by surveying the prospective field of membership.

When a potential overlap situation does arise, officials of the involved credit unions must attempt to work the problem out between or among themselves. In the case of a new federal credit union applying for or converting to a community field of membership, the applicant will generally be required to contact only those credit unions with a service facility within the community boundary. Other credit unions serving select groups within the proposed area will not ordinarily be contacted or afforded overlap protection unless a significant portion of their field of membership is affected. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible, an application for a new charter may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

When resolution of the issue is not possible, and other circumstances warrant, an overlap may be permitted. Among the circumstances which may justify an overlap are:

- Failure of the original credit union to provide quality service.
- Limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.
- Incidental overlap—the group of persons in question is so small as to have no material effect on the original credit union.

In reviewing the overlap, the regional director will consider the nature of the issue, efforts made to resolve the matter, financial effect on the overlapped credit union, the desires of the group(s), the desire of the sponsor organization, the opinion of the state credit union supervisor and other interested parties, as applicable, and the best interests of the affected group and the credit union members involved.

Potential overlaps of a state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. However, where a state credit union's field of membership is so general as to include virtually everyone in a wide area, NCUA may exclude any state credit union from overlap protection altogether just as it would with a federal credit union with a broadly defined field of membership. Prior to making that decision, the regional director will consult the credit union and the state regulator. Any decision by the regional director will be provided in writing to the credit union and the state regulator.

Generally, NCUA will permit federal credit unions serving occupational groups to overlap associational and community charters. However, should the proposed overlap pose significant safety and soundness concerns, NCUA may provide overlap protection for any type charter. For example, labor union

groups constitute an associational common bond, and while some labor unions serve members who work regularly for several employers, others have members who work for only one employer. In these latter cases, overlap protection may be provided if a substantial portion of the company's employees are served by the credit union.

Some situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, may not warrant approval of an overlap. A federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select group also located in Chicago would be better served by it than by the select group's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the regional director for affiliation with an existing federal credit union must advise in writing whether the group is included within the field of membership of any other credit union. This requirement will alert the regional director to possible overlap situations before they occur. Most potential field of membership conflicts can be avoided in this way. If cases do arise where the assurance given to a regional director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

IV.B.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the group descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of a group described in Section 5. Where acquisitions are made which add a new wholly-owned or majority-owned subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring of the parent organization. Credit unions affected by organizational restructuring are required first to attempt to resolve overlap issues among themselves. Once the affected credit unions reach agreement, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve.

In addition, credit unions must submit to NCUA correspondence from the parent organization explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the organizational structure should identify divisions and subsidiaries and the location and number of employees at each location.

Overlaps may also occur as a result of the parent organization's merger. NCUA's general policy of avoiding overlaps applies to those resulting from corporate mergers as well. Affected credit unions must make every reasonable effort to identify up front and address the overlap issue raised by parent corporation mergers and must attempt to resolve any differences among themselves. In those rare cases which require NCUA's intervention, all attempts to resolve the issues must be fully documented by the affected credit unions.

Affected credit unions should consider consolidation (merger) of institutions as a possible alternative to dividing up the field of membership, particularly if safety and soundness concerns exist or future viability is in question. A federal credit union which has a broad based field of membership generally has a better chance of survival when a sponsor restructures or closes.

While neutral, NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap and other relevant issues.

NCUA will be flexible when working with credit unions affected by parent corporation mergers and divestitures. Where no other credit union service is available and the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

"Employees of XYZ Corporation, formerly a subsidiary of ABC, Incorporated, located in Charleston, South Carolina. . . ."

IV.B.3—Overlaps-Exclusionary Clauses

This discussion pertains to new and existing charters.)

Where two credit unions agree and/or NCUA has determined that an overlap should be avoided, this decision may need to be memorialized in a federal credit union's charter through an exclusionary clause. Examples of exclusionary wording are:

- Persons who work for Hilo Sugar Company, except those who work in or are paid from or are supervised from San Francisco, California.
- Persons who work for the ABC Co., except those employed by the XYZ Division as of June 30, 1994.
- Persons who work for the ABC Co., except those who were members of the XYZ Federal Credit Union as of June 30, 1994.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. To minimize this difficulty, NCUA generally does not require federal credit unions to apply exclusionary clauses to persons eligible for membership in another credit union simply because they are one of the "other persons sharing common bond" listed in Section II.E of this Chapter.

Moreover, if phrased improperly or used in situations for which they are not suited, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while the person working next to him or her may not. For this reason, exclusionary clauses are rarely if ever appropriate for inclusion in a community charter's field of membership as a way to resolve overlap concerns.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. Addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will strive to define as precisely as possible:

- The identity of the group to be excluded;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union; and
- Whether the exclusion is to apply only to the current members of the group or to future members as well.

V—Special Situations

There are some instances where, because of overriding policy, special common bond rules apply. To ensure quality service to as many low-income and senior citizens as possible, NCUA has established broader common bond

rules for federal credit unions seeking to serve those groups. Further, to expedite service to groups in industrial parks, shopping centers, and similar areas, the documentation requirements for federal credit unions seeking to serve these groups have been simplified. Finally, to ensure consistency throughout the credit union movement, NCUA has centralized decision making for the corporate credit union program in the Central Office.

V.A—Low-Income Credit Union Groups

V.A.1—General

A low-income credit union is defined in Part 701.32 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual income falls at or below 80 percent of the median household income for the nation. In documenting its low-income membership, a credit union that serves a geographical area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

A credit union designated by NCUA as serving predominantly low-income members has greater flexibility in accepting non member deposits insured by the National Credit Union Share Insurance Fund. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development and community revitalization efforts. A credit union participating in the revolving loan program is also eligible for technical assistance. The requirements for participation in the revolving loan program are set forth in Part 705 of NCUA's Regulations. Only operating credit unions are eligible for participation in the revolving loan program.

A federal credit union charter applicant meeting the definition of a low-income credit union should forward a separate request for low-income designation, along with appropriate documentation, at the time the charter application is submitted. A charter applicant's low-income designation will be based on its primary field of membership and not on its actual members as is the practice for operating credit unions. In most cases, if the credit union qualifies, NCUA will grant the charter and low-income designation simultaneously.

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering process. Even after the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should be for a duration of one year subject to renewal. However, within three years of commencement of operations, the credit union should no longer require such services.

V.A.2—Special Common Bond Rules for Low-Income Federal Credit Unions

Generally, a low-income credit union is chartered as a community or associational credit union. A low-income credit union that has a community common bond may include the following language in its field of membership:

"Persons who live in [the target area]; persons who regularly work, worship, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons."

In recognition of the special efforts needed to help make credit union service available to persons in low-income communities, NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all its members will meet the low-income definition of Part 701.32 of NCUA's Regulations. The association, in documenting its low-income membership, may use the same types of documentation as is currently permitted for determining whether a community is low-income under Part 701.32 of NCUA's Regulations.

In addition, a proposed low-income community or associationally based federal credit union may include in its field of membership, without regard to location, another group constituting an occupational, associational or community common bond. Except for the operational area requirements, the proposed credit union must meet all the requisites for including the group in its charter. Moreover, the proposed credit union must take care to ensure that it will continue to meet the requirements for low-income status.

V.A.3—Special Common Bond Rules for Other Federal Credit Unions Seeking to Serve Low-Income Persons

In the interest of making credit union service available to persons in low-income communities, NCUA also permits any occupational, associational, multiple group, or community federal credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition of Part 701.32 of NCUA's Regulations. The associational group may be formed for the sole purpose of providing eligibility for federal credit union service, but must comprise only persons meeting NCUA's low-income definition.

The federal credit union adding the low-income community or association must document that the community or association meets the low income definition in Part 701.32 of NCUA's Regulations, just as is required for a designated low-income credit union. A federal credit union adding such a community or association, however, would not be able to receive the benefits, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions, offered to low-income credit unions.

A federal credit union that desires to include a low-income community or association in its field of membership must first develop a business plan specifying how it will serve the entire low-income community. The business plan, at a minimum, must identify the credit and depository needs of the low-income community or association and detail how the credit union plans to serve those needs. The credit union will be expected regularly to review the business plan as well as loan penetration rates in the community to determine if the community is being adequately served. NCUA will require periodic service status reports on its service to the low-income community and may review the credit union's service to low-income persons during examinations.

V.B—Retiree and Senior Citizen Groups

Special common bond rules also apply for providing service to retiree and senior citizen groups. It is NCUA policy to encourage federal credit unions to bring credit union service to senior citizens (aged 50 and over) and retired persons. To help in this effort, federal credit unions may form associations of such persons for the sole purpose of providing eligibility for credit union service. Except for the minimum age requirement of 50, the

definition of a senior citizen is left to the credit union's discretion. Moreover, the only documentation requirement for including such an association in a federal credit union's charter is a written request from the credit union; no request from the group or copy of the association's charter or bylaws will be needed. In all other respects, however, the requirements for including an association in a federal credit union's field of membership apply, including those relating to the credit union's operational area.

V.C—Employees at Industrial Parks, Shopping Centers, and Similar Areas

A federal charter may include in its field of membership persons working in a particular industrial park, shopping mall, office complex, or similar development either through a community or multiple group charter.

If the multiple group option is selected, NCUA permits the credit union to satisfy the requirement for a request from each of the groups through a request by the complex owner, leasing agent, or similar responsible official. The complex owner, leasing agent or similar official must provide information regarding credit union service available to any segment of the proposed select group amendment or proposed federal credit union. It is up to the applicant credit union to investigate whether credit union service is already available to any segment of the select group amendment or proposed charter.

In general, exclusionary clauses will not be used to protect any overlapped credit union. However, in those cases where each employee group in the complex has not specifically requested credit union service, NCUA may exercise broad discretion in addressing overlaps with other credit unions and any request from a group to be removed from the field of membership.

The following or similar wording will be used to define groups added under this procedure: "Employees who regularly work in the Plaza Mall, New Orleans, Louisiana"

If the community option is selected, the industrial park, shopping center, or office complex must meet the standards for community charters.

V.D—Corporate Federal Credit Unions

A corporate credit union is defined as one that:

- is operated primarily for the purpose of serving other credit unions,
- is designated by the NCUA as a corporate credit union, and
- limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Corporate credit unions operate under and are governed by standards different from those applicable to natural person credit unions. These standards are set forth in part 704 of NCUA's Regulations.

Supervision of corporate credit unions is the responsibility of NCUA's Office of Examination and Insurance. All applications for federal corporate charters as well as requested changes to section 5 of the charter of existing corporate federal credit unions should be directed to that office.

VI—Name Selection

It is the responsibility of the federal credit union organizers to ensure that the federal credit union applicant's name or federal credit union name change does not constitute an infringement on the name of any corporation in their trade area. This responsibility also includes researching any service marks or trademarks used by any other credit union in their trade area. NCUA will ensure, to the greatest extent possible, that the credit union's name:

- is not already being officially used by another federal credit union;
- will not be confused with NCUA or another federal or state agency, or with another federal credit union; and
- does not include inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

VII—Steps To Take To Organize a Federal Credit Union

VII.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit the proposed field of membership to NCUA early in the process for written tentative approval.

Once the field of membership has been tentatively approved, and the organizer is satisfied the application has merit, the organizers should conduct a preliminary organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

The organizers and subscribers should arrange for any meetings necessary to develop the business plan discussed in section IV.A.4 of this chapter and to complete the documentation for submittal to NCUA. Each of the required documents is discussed more fully later in this chapter.

The organizers and subcribers must apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) will be executed by the prospective chief executive officer and recording officer. Following action on this issue, the prospective chief executive officer and chief financial officer will execute the Application and Agreements for Insurance of Accounts (NCUA 9500). These documents should be provided to NCUA as part of the charter application.

The organizers and subscribers should also complete an NCUA 4012, Report of Official or Employee, for each prospective board member, credit and supervisory committee member, and employee. The NCUA 4012s should be submitted to NCUA as early as possible to enable the necessary credit reports and background checks to be obtained well in advance of the anticipated charter date. NCUA will pay the direct costs of acquiring such credit and background checks.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at the meeting.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors and credit committee of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

VII.B—Support for Charter Application

VII.B.1—General

As discussed previously in this chapter, applicants for federal credit union charters must, at a minimum, provide evidence that:

- the group constitutes a recognized common bond;
- the subscribers, prospective officials and employees are of good character; and
- the establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see section entitled "Subscribers" earlier in this chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers. See Appendix D for the necessary blank forms.

VII.B.2—Federal Credit Union Investigation Report, NCUA 4001

Applications for new federal credit unions will be submitted on NCUA

4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse. Associational charter applicants must include a statement of their membership criteria (normally the group's charter or bylaws) and current financial statements on the associational sponsor.

VII.B.3—Report of Official and Employee, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official must complete and sign this form. The organizers must review each of the NCUA 4012s for elements—criminal convictions, indictments, etc.—that would prevent the prospective official or employee from serving in an official capacity. Further, such factors as past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

VII.B.4—Organization Certificate, NCUA 4008

This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate. During his or her on-site contact, the NCUA staff member assigned to the case will assist in the proper completion of this document.

VII.B.5—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for insurance of member accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

VII.B.6—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. Each prospective federal credit union must qualify for federal share insurance.

VIII—NCUA Review

VIII.A—General

As discussed previously, NCUA may provide tentative approval of the proposed federal credit union's field of membership. Additionally, credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizers and subscribers to reduce the likelihood of delays in the chartering process.

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers within 10 business days of receipt, and a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union. NCUA will make every effort to process the application expeditiously.

The staff member will review the application package and verify its accuracy and reasonableness. The staff member will inquire into the financial management experience, suitability and commitment of the proposed officials and make an assessment of economic advisability. The staff member will also assist the subscribers in the proper completion of the Organization Certificate, NCUA 4008. By assisting in the completion of the Organization Certificate, the staff member may, without indicating his or her endorsement of the charter application, expedite the process.

The staff member will thoroughly analyze the prospective credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the organizers and discussed with the prospective credit union's officials.

The staff member will then make a recommendation to the regional director regarding the charter application. His or her recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample Letter of Understanding and Agreement is attached in Appendix B.

VIII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and bylaws from the regional director. Additionally, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union.

Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various trade organizations listed in Appendix F.

VIII.C—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this Chapter, the organizers will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that they could consider for gaining approval or otherwise acquiring credit union service.

The letter of denial will include the procedure for and other information on the group's right to appeal the decision.

VIII.D—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Future Supervision

Once NCUA has granted a charter to a new federal credit union, an examiner will be assigned to supervise the credit union.

The examiner will be responsible for monitoring the progress of the credit union and ensuring it gets off to a good start. The examiner will also monitor compliance with the terms of the Letter of Understanding and Agreement. Typically, the examiner will require copies of monthly board minutes and financial statements.

Each federal credit union is examined regularly to NCUA to determine that it remains in compliance with law and regulation and to determine that it does

not pose undue risk to the National Credit Union Share Insurance Fund.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any board member, any credit or supervisory committee member, or any senior executive officer. Part 701.14 of the NCUA Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change. NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union.

CHAPTER 2—AMENDMENTS TO THE FIELD OF MEMBERSHIP

I—Introduction

As stated in Chapter 1, Section 5 of every federal credit union's charter defines the groups the credit union is legally entitled to serve. There are a number of instances in which Section 5 may need to be changed. On each of these occasions, the federal credit union must obtain approval from NCUA before amending its charter.

First, a group not included in a federal credit union's charter may wish to be served by that credit union. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off. Second, a federal credit union may wish to change it common bond entirely—from an occupational to a community credit union, for example, or vice versa. Third, which is discussed in Chapter 3, a state-chartered credit union may wish to convert to a federal charter. (The field of membership of a federal credit union converting to a state charter is determined under applicable state law, except to the extent that the credit union seeks to continue to be federally insured and the proposed new field of membership would adversely affect the safe and sound operation of the institution.) Finally, a federal credit union may wish to remove a group from its field of membership—for example, through agreement with the group or a spin-off.

NCUA's goals with respect to amendments of federal credit union charters are the same as for including groups in the charters of new federal credit unions. The Agency's analysis, therefore, is also similar, though adapted for the different circumstances in which the issue arises—primarily the facts that the federal credit union is in existence and has a history of service that can be evaluated.

The three issues NCUA must evaluate in deciding whether to approve a change in a federal credit union's field of membership are:

- whether the change satisfies NCUA's common bond requirements;
- whether the interests of the groups to be added are demonstrated; and
- whether the change is economically advisable.

II—Additions Through Direct Agreement With a Group

The most common type of addition to a federal credit union's field of membership is through agreement with the group itself. The requirements are similar to those for including a group in a federal credit union's charter initially.

II.A—Common Bond Requirement

II.A.1—Additions to Fields of Membership of Occupational, Associational, and Multiple Occupational/Associational Federal Credit Unions

As with new multiple occupational/associational federal credit unions, occupational and associational groups may be added to occupational, associational, and multiple occupational/associational federal credit unions in two ways. If the group is part of an occupational or associational common bond which constitutes a majority of the federal credit union's field of membership, the group may be added regardless of location. These are commonly called "common bond additions." For any other occupational or associational common bond, the group must be within the credit union's operational area. These are commonly called "select group additions."

The requirements for common bond additions are identical to those for inclusion of occupational and associational common bonds in a credit union's initial field of membership; please refer to Section II.A and II.B of Chapter 1 for guidance. The requirements for select groups additions are similar to those set forth in Section II.D of Chapter 1 for inclusion of other associational and occupational groups in a multiple group federal credit union's field of membership initially, with this exception: The credit union may add groups within the operational areas of one of its planned service facilities if:

- The planned facility begins operation shortly after the group is added; and
- The current field of membership constitutes a significant portion of the total field of membership to be served initially by the proposed facility. Although the addition of a new select group alone is not enough to justify a planned service facility, it is permissible to include new groups as partial justification for such a facility.

Moreover, in the case of a planned facility, NCUA may, in its discretion, require financial projections and/or a business plan supporting amendments around that service facility in order to determine the economic feasibility and to address any safety and soundness concerns of the amendment.

II.A.2—Additions to the Common Bond of a Community Federal Credit Union

Community federal credit unions, except those designated low-income or distressed, may expand their fields of membership only by redefining their boundaries. There must be interaction among persons who live or work within the proposed well-defined neighborhood, community or rural district. The burden of proof for existence of the common bond is placed upon the applicant credit union.

In the majority of cases where community credit unions are asking to expand their areas of service, and in all cases where a conversion to a community charter is proposed, an NCUA staff member will make a documented on-site evaluation of the proposal. The staff member will prepare a separate analysis of the proposed amendment, independent of the credit union's application. Following completion of the on-site evaluation and regional office review of the staff member's report, the regional director will act on the proposal. Certain expansions require NCUA Board consideration.

II.A.3—Special Situations

II.A.3.a—General

The special rules for credit unions serving low-income persons, serving retirees and senior citizens over 50 years old, and serving employees at industrial parks, shopping centers and similar facilities apply equally to field of membership additions. However, there are two special situations unique to existing federal credit unions: (1) corporate restructurings and (2) plant or base closings, and other kinds of distress to a substantial portion of a credit union's membership.

II.A.3.b—Corporate Restructuring

If an occupational or associational group within a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership if the credit union is to continue to provide service. NCUA will permit a credit union to add to its field of membership a sold or spun off group to which it has been providing service, without regard to location, if the group requests continued service, documented by a letter from an official representative, on the group's letterhead where possible.

II.A.3.c—Distress Situations

If a major group within the field of membership of any federal credit union—whether occupational, associational, community or multiple group—suffers a severe economic reversal—e.g., a plant or base closing—one option for the credit union may be to diversify its field of membership by adding groups desiring to be served. If economically advisable, NCUA may facilitate the credit union's diversification efforts, to the extent and only until the credit union's viability is assured, by allowing the credit union to add occupational and associational groups without regard to location. To obtain this authorization, the credit union must submit a request for designation as a distressed credit union to its regional director.

The decision will be based on the totality of the circumstances, including the severity of the economic problem, whether offsetting gains from the expansion of other groups currently in its field of membership are reasonably foreseeable, the availability of other groups able to be served, the likely cost the credit union will incur in reorienting itself to serve those groups, the competitive environment it is operating in, the effect on other credit unions, and the availability of alternatives such as merger. Prior to making a determination on this issue, NCUA may request such additional information, including a business plan, as may be appropriate.

II.B—Interests of the Group to be Added

Of primary concern to NCUA is that quality credit union service be provided to all groups served by a federal credit union. Therefore, with respect to each field of membership addition, NCUA requires documentation from each group to be added stating that it desires service from the applying credit union.

II.C—Economic Advisability

Prior to granting a field of membership addition, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition and its likely effect on other credit unions. Most of the information needed for analyzing the effect of adding a particular group will already be available to NCUA through the examination and call reports; generally, nothing more will be needed. However, in particular cases, a regional director may ask for additional information prior to making a decision. With respect to a proposed addition's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.A.2 of Chapter 1 apply here as well.

II.D—Documentation Required

The documentation needed for community charter additions will vary substantially depending on the circumstances, and has been described in general terms above. For common bond and select group additions, which constitute the bulk of amendment requests, the procedures are more standardized. A federal credit union requesting such a change must submit a formal written request, using the Application for Field of Membership Amendment form shown in Appendix D, or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

The Application for Field of Membership Amendment form must be accompanied by the following:

- A letter signed by an official representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery—regional directors may, at their discretion, however, accept such other documentation or certification as they deem appropriate. This letter must indicate:
- that the group wants to be added to the applicant federal credit union's field of membership;
- whether the group presently has any credit union service available;
- the number of persons currently included within the group to be added and their locations; and
- in the case of a select group addition, the group's proximity to one of the credit union's service facilities to which the group has access.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the standards set forth in Section IV.B of Chapter 1.
- If the group to be included is an associational group, the credit union must, where required as established in Chapter 1, also provide a copy of the group's charter and bylaws defining the group's purpose, membership classes, and geographical area.

III—Additions Through Consolidation With Another Credit Union

NCUA supports credit unions desiring to remain a separate entity. However, there are three other ways a federal credit union can expand its field of membership, two of which result in a credit union's ceasing to exist—by taking in the field of membership of another credit union through a merger or a purchase and assumption (P&A), or by taking a portion of a continuing credit union's field of membership through a spin-off. Spin-offs are discussed in Section VI of this Chapter.

III.A—Mergers

Generally, the standards applicable to field of membership amendments apply to mergers where the continuing credit union is a federal charter. In particular, where the merging credit union is state chartered, the field of membership rules applicable to a credit union converting to a federal charter apply. However, there are some differences:

- As to a merger involving a common bond addition, the requirements to provide a request for credit union service from the corporate, associational, or other unit to be added is not required, since the unit already has credit union service.
- As to a merger involving a select group addition:
- For the same reason, the requirement for a letter from each group included in the credit union's field of membership is not required.
- Where a state credit union is merging into a federal credit union, the operational area requirement may be waived on a proper showing that the state credit union will continue to be able to provide quality credit union service to its current field of membership as a federal credit union. Upon merging, the state credit union's field of membership will be worded to conform to the NCUA standards set forth in Chapter 1. Any subsequent field of membership amendments must comply with applicable amendment procedures.
- As to a merger of a community credit union into a federal credit union of any type, the continuing credit union may be permitted to continue to provide service to the merging credit union's members of record as of the merger date where the operational area requirement

is satisfied. Except in the case of an emergency merger, the continuing federal credit union can obtain only the members of record of the merging community credit union.

Where both credit unions are community charters, the continuing credit union is a federal credit, and the criteria for expanding the service area of a community federal credit union (as discussed previously in this Chapter) are satisfied, the entire field of membership of the merging credit union may be added to the continuing federal credit union's charter.

Mergers must be approved by all affected NCUA regional directors, and, as applicable, the state regulators.

III.B—Emergency Mergers

A specifically designated emergency merger may be approved by NCUA without regard to field of membership or other legal constraints. An emergency merger involved NCUA's direct intervention. The credit union to be merged must either be insolvent or will likely become insolvent within 12 months and NCUA must determine that:

- an emergency requiring expeditious action exists
- other alternatives are not reasonably available
- the public interest would best be served by approving the merger

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act.

III.C—Purchase and Assumptions (P&A's).

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a purchase and assumption (P&A).

A P&A has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership along with specified loans, shares and certain other designated assets and liabilities, without regard to field of membership amendment restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

P&A's involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and, as applicable, the state regulators.

IV—Field of Membership Conversions

A community federal credit union may convert to an occupational, associational, or multiple group credit union, and an occupational, associational, or multiple group credit union may convert to a community credit union. In any case, a change to the credit union's field membership will be necessary.

IV.A—Conversion to Occupational, Associational, or Multiple Group Federal Credit Union

A community federal credit union converting to an occupational, associational, or multiple group field of membership must meet the common bond and economic advisability requirements applicable to the type of charter which it seeks conversion to.

IV.B—Conversion to Community Charter

An existing occupational, associational or multiple group federal credit union may apply to convert to a community charter. In most cases, groups currently in the credit union's field of membership but outside the new community credit union's boundaries may be included in the new community charter.

In order to support a case for a conversion to community charter, the applicant federal credit union must develop a detailed business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency.
- A map or maps showing both the existing and proposed boundaries for the field of membership.
- A written description of the area of community service for the proposed community credit union.
- The most current population figures for the existing and proposed boundaries.
- The source of the population information; census data are considered the most authoritative; the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and interaction among its residents.
- Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the persons who live, work, or worship in the area are interested in affiliating with the applicant credit union.
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1.
- Information concerning the availability of financial services to the residents of the new area.
- A list of credit unions with a home or branch office in the proposed area. (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.)
- The attitude of current credit union sponsors and existing credit union members toward the proposed conversion.
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

V—Removal of Groups From the Field of Membership

Credit unions may request removal of a group from its field of membership for various reasons.

The most common reasons for this type amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service.
- The federal credit union cannot continue to provide adequate service to the group.
- The group has ceased to exist.
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support.
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. Membership may continue for those who are already members if the credit union has adopted the "once a member, always a member" bylaw provision.

VI—Spin-Offs

A "spin-off" occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that one credit union has a field of membership addition and the other has a removal.

If the spin-off goes to a new federal charter, the requirements of Chapter 1 apply. (See that chapter for discussion of the field of membership and documentation requirements for new federal charters.) If it goes to an existing federal charter, the requirements of Chapter 2 apply.

Spin-offs involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and the state regulators, as applicable.

The request for approval of a spin-off must be supported with a plan that addresses, as a minimum:

- Why the spin-off is being requested.
- What part of the field of membership is to be spun-off.
- Whether the affected credit unions have a common sponsor or are located within the same operational area.
- Which assets, liabilities, shares and capital are to be transferred.
- The financial impact the spin-off will have on the affected credit unions.
- The ability of the acquiring credit union to effectively serve the new members.
- The proposed spin-off date.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers—see Part 708 of the NCUA Regulations—except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state statute.

VII—Professional Conflicts

It is important for a credit union, as well as professional organizations such as accounting firms, law firms, real estate title insurance firms and appraisal firms, to avoid the appearance of impropriety when the credit union contracts with a professional organization for services. This is even more critical if the professional organization and/or its employees are members of the credit union.

When a professional organization is added to a federal credit union's field of membership, the credit union should notify the professional organization of certain provisions. The following notice is intended to ensure that decisions made by a credit union and the professional organizations serving the credit union are independent of any loan decisions or deposit activities:

"Please be advised that with respect to the addition of the employees of [professional organization] to the [FCU], any lending, deposit and/or other credit union services involving this group's members must avoid any appearance of impropriety and must follow the ethical standards of the profession."

VIII—Procedures for Amending the Field of Membership

VIII.A—General

All requests for approval to amend a federal charter must be submitted to the appropriate regional director. In normal cases, the regional director will make a decision on the request within 10 business days. If a decision cannot be made within that time, the regional director will notify the credit union within the 10-business-day period.

To streamline the process further, NCUA has instituted two additional procedures—a limited preapproval process and a procedure for easing the workload when making substantial charter changes as with mergers and charter conversions.

VIII.B—Streamlined Expansion Procedure (SEP) for Small Occupational Groups

In keeping with the goals of NCUA chartering policy to provide service to all eligible groups desiring credit union service, well operated federal credit unions except those designated as "distressed" may take advantage of the SEP for adding occupational groups to their fields of membership.

To use this procedure, the federal credit union's board of directors must first apply to their respective NCUA regional director for a charter amendment. The charter amendment request must be signed by the presiding officer of the board of directors.

The following is a sample amendment for permitting a federal credit union to use the SEP authority:

Groups of persons with occupational common bonds which are located within 25 miles of one of the credit union's service facilities, which have provided a written request for service to the credit union, which do not presently have credit union service available, and which have no more members in the group than the maximum number established by the NCUA Board for additions under this provision: Provided, however, that the National Credit Union Administration may permanently or temporarily revoke the power to add groups under this provision upon a finding, in the Agency's discretion, that permitting additions under this provision are not in the best interests of the credit union, its members, or the National Credit Union Share Insurance Fund.

Once NCUA has approved the amendment and the credit union board has adopted it, the SEP authority may be implemented. The charter amendment permits approved federal credit unions to immediately begin serving employee groups meeting criteria set forth in this section. Under this procedure, there is no formal NCUA action necessary on each group being added.

The maximum number of persons for each group of employees which may be added under SEP will be established by the NCUA Board from time to time. The number will be based on potential primary members—that is, the persons sharing the basic occupational affinity to each sponsor group; family members and other derivative members are not included in the SEP limit. Several groups may be simultaneously added using these procedures; however, the maximum number of persons for each group must fall within the SEP limit.

The SEP does not apply to associational groups since NCUA must review membership requirements and geographical area prior to these groups' being added to a field of membership. The procedure also does not apply to community charter expansions because of the more individualized analysis required.

The following SEP steps and documentation requirements must be adhered to:

- The federal credit union must complete, for each group to be added, an Application for Field of Membership Amendment form shown in Appendix D
- The federal credit union must obtain a letter, on the group's letterhead where possible, signed by an official representative identified by title, requesting credit union service and stating that the group does not have any other credit union service available from any source
- The group must be located within 25 miles of one of the federal credit union's service facilities
- The group must indicate the number of potential members—the number of employees—seeking service

• The federal credit union must maintain the above documentation permanently with its charter

• The federal credit union must maintain a control log of groups added to its field of membership under the SEP procedure. The control log must include the date the group obtained service, the name and location of the sponsor group, the number of potential primary members added, the number of miles to the nearest main or branch office, the federal credit union board of director's approval of the group and the date approved. See Appendix D for a sample control log.

• The groups added under SEP must be reported to the federal credit union's board at the next regular board meeting and made a part of the meeting minutes

• The control log and other SEP documentation must be made available to NCUA upon request

The regional director may from time to time request service status reports on groups added under SEP. It is advisable to use some method, such as a sponsor prefix added to the member account number, to readily access data for such groups.

Should a federal credit union fail to provide quality credit union service, as determined by the group's members or employees, to a group added under SEP, NCUA may subsequently permit dual membership with another credit union.

Should a federal credit union fail to follow the above procedures or deteriorate financially or operationally, NCUA, at its discretion, may revoke the SEP privilege.

VIII.C—Block Additions

When a state credit union is converting to a federal charter or when a credit union is being merged into a federal credit union, large blocks of select groups frequently are added to a credit union's field of membership. In such cases, the federal credit union whose field of membership is being revised should consult directly with the appropriate regional office early in the process to ensure the efficient treatment of such revisions and to avoid misunderstandings.

Therefore, when a block of 50 or more new groups is being added to a credit union's field of membership at any one time, NCUA may require that a list of the groups and their locations be provided on a computer diskette. Director coordination with the appropriate NCUA regional office will ensure the compatibility of hardware and software.

VIII.D—Regional Director's Decision

Except for those field of membership amendments resulting from use of the SEP, all such amendment requests will be reviewed by regional office staff in order to ensure conformance to NCUA policy, are properly documented, and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions.

NCUA understands and appreciates the importance of timely processing of well-supported amendment requests. Therefore, NCUA has established a goal of ten business days from the date of receipt in the regional office for processing of a routine, complete amendment request. A fully documented request, including the Application for Field of Membership Amendment, that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA staff may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious financial or operational problems must be carefully considered if the safety and soundness of the credit union is to be preserved.

In most cases, field of membership amendments will only be approved for credit unions which are operating satisfactorily. If a federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focused on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

VIII.E—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be furnished a formal, updated Section 5 of its charter which restates the field of membership, including the requested amendment. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

VIII.F—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this chapter, the applicant will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that could be considered for gaining approval.

The denial letter will include the procedure for and other information on the credit union's right to appeal the decision.

VIII.G—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Service Status Reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups.

The regional directors will periodically request that such federal credit unions submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members.

These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services.

In any event, federal credit unions using the select group amendment method should implement an information gathering system early in their amendment/diversification program to track their progress in providing service to the potential members of their select groups.

This information will help the credit union to operate more efficiently and

will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc.

The service status reports will enable NCUA to determine which federal credit unions are serving newly added groups, as well as any federal credit unions that are not serving new groups.

If the NCUA determines that a federal credit union is not adequately serving new groups, the regional director may restrict further amendments and permit the groups not being adequately served to be overlapped with another federal credit union or remove the select group(s) not being served from Section 5 of the credit union charter.

CHAPTER 3—CHARTER CONVERSIONS

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument granted to the institution by the state or federal government.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under federal law.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation.

There are two types of charter conversions—federal charter to state charter, and state charter to federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so, it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and
- be granted a charter by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

Generally, a converting state credit union's field of membership must conform to NCUA chartering policy. However, if a converting credit union can demonstrate that it has been effectively serving groups outside what would have been its operational area if it had been a federal credit union, the regional director, in his or her discretion, may permit continued service to these groups after conversion. Every reasonable effort will be made to phrase the field of membership similar to the presentations in Chapters 1 and 2 with individually listed groups and their locations. In any case, subsequent changes must conform to NCUA amendment policy in effect at that time.

II.B.—Submission of Conversion Proposal to NCUA

The following actions are to be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence that the state regulator is either in agreement with the conversion proposal or, if not in agreement, the reasons therefor.
- The Application for Insurance of Accounts (NCUA 9600) in the case of a state credit union that is not federally insured.
- The Application and Agreements for Insurance of Accounts (NCUA 9500).
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (NCUA 4000).
- The most current financial report and delinquent loan schedule.
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

II.C.2—On-Site Review

NCUA will examine the books and records of the credit union on-site. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement ("LUA"), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's approval, the board must:

• Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;

• Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;

• Obtain a letter from the share insurer, if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director.

• Submit a statement of the action taken to comply with any conditions imposed by the regional director in the approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board has completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. Denials are appealable. (See Chapter 1, section VIII.D.)

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations. Actions to be taken at this meeting include:

• Change of the credit union's name on all records, accounts, investments and other documents evidencing assets or liabilities of the credit union;

• Changes to the credit union's books and records:

• As of the commencement of business, the accounting system, records, and forms must conform to the standard established by NCUA;

• New journal and cash record and general ledger records should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the federal credit union;

• The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state regulator; and

• The individual share and loan ledger accounts used by the state credit union may continue to be used.

The federal credit union's name will be properly reflected on these accounts.

II.E.4—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

• Report of Officials (NCUA 4501).

• Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

• Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;

• Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and

• Comply with applicable state law and the requirements of the state regulator.

Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union wants to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the Application.

If the converting federal credit union does not want to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations.

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

• A current financial report;

• A current delinquent loan schedule;

• An explanation and appropriate documents relative to any changes in insurance of member accounts;

• A resolution of the board of directors;

• A proposed Notice of Special Meeting of the Members (NCUA 4221);

• A copy of the ballot to be sent to members (NCUA 4506);

• Evidence that the state regulator is in agreement with the conversion proposal; and

• A statement of reasons supporting the request to convert.

III.D—Approval of Proposal to Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigations into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.E—Approval of Proposal by Members

Upon approval of the proposal by the regional director, the following actions will be taken by the board of directors:

• The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.

• Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:

• Specify the purpose, time and place of the meeting;

• Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;

• Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;

• Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and

• State in bold face type that the issue will be decided by a majority of members who vote.

• A copy of the notice of the meeting shall be delivered to the regional director at the same time that it is delivered to the members.

• The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.

• The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:

• Ensure that all requirements of state law and the state regulator have been accommodated;

• Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert;

• Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

• The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports (FCU 109A and 109B) as of the preceding month-end should be submitted at this time.

• The regional director will notify the credit union and the state regulator is writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.

• The credit union shall cease to be a federal credit union as of the effective date of the state charter.

• If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effected and completed until the improper actions and steps have been corrected.

• Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.

• If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.

• There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements. The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.

• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA

Rules and Regulations as well as state laws may be used for further reference.

Appeal—The right of a credit union or charter applicant to request reconsideration of an unfavorable NCUA decision to a higher authority.

Associational common bond—Association resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits and mutual interests. The association should hold regular meetings and sponsor other activities that provide for contact among members.

Associational credit union—A credit union whose field of membership consists primarily of persons who are members of one or more related associational groups.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economic viability of a proposed charter or field of membership addition.

Charter—The document which authorizes or combination of groups to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Commond bond—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are only three common bonds which can serve as a basis for a group's forming or being included in a federal credit union: employment by the same enterprise ("occupational common bond"), membership in the same association ("associational common bond"), and residence, employment, or religious affiliation in the same geographic area ("community common bond").

Community common bond—Residence or employment of persons and businesses and other legal entities located within the same well-defined neighborhood, community or rural district.

Community credit union—A credit union whose field of membership consists of persons who live or work in the same well-defined neighborhood, community, or rural district.

Conversion—The process of changing from a federal to a state or state to federal credit union charter.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

Economic viability—An overall evaluation of the credit applicant's ability to operate successfully.

Emergency merger—Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to field of membership policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group otherwise included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (persons may include organizations and other legal entities) a credit union is permitted to accept for membership. A federal credit union's field of membership, set forth in Section 5 of its charter, may be made up entirely of a single group, related groups with one common bond, or of unrelated groups each having its own common bond.

Letter of understanding and agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants, and occasionally with credit unions granted significant charter amendments and are for a limited time.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the Appropriate state regulator whenever a state credit union is involved.

Multiple group credit union—A credit union whose field of membership consists of groups of persons, each group with its own common bond. The groups may be occupation, associational, or a combination thereof and do not need to share a common bond or be in any way related to one another.

Occupational common bond—Employment in the same enterprise. "Employment" includes long term contractual arrangements which are the practical equivalent of regular employment.

Occupational credit union—A credit union whose field of membership consists primarily of persons employed in the same enterprise.

Operational area—The region which, as determined by NCUA in its discretion, may reasonably be served by one of a credit union's service facilities.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Potential membership—Persons eligible to become primary members of a federal credit union.

Primary members—Members sharing the basic occupational, associational or community affinity to the field of membership.

Purchase and assumption—Purchase of all or a part of the assets of and assumption of all or a part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Select group—An occupational or associational group with its own common bond.

Secondary or derivative members—Members included in the field of membership by virtue of their close relationship to a common bond group (e.g., immediate family members, employees of the credit union, etc.).

Service facility—A facility staffed by a credit union representative which accepts share deposit and accepts loan applications or disburses loans. An ATM or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of meeting the operational area requirements of non-common bond expansions.

Service status report—Periodic written statements made by federal credit unions to NCUA summarizing the results of efforts to bring service to the employees or members of select groups.

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials

_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered

credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements. Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 19____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ day of _____ 19____.

NATIONAL CREDIT UNION ADMINISTRATION BOARD ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____

Regional Director

_____ Federal Credit Union

By:

_____

Chief Executive Officer Date

_____

Chief Financial Officer Date

_____

Secretary Date

Appendix C—NCUA Offices

CENTRAL OFFICE
1775 Duke Street
Alexandria, VA 22314–3428
Commercial: 703–518–6300

REGION I—Albany
9 Washington Square
Washington Avenue Extension
Albany, NY 12205–5512
Commercial: 518–464–4180
FAX: 518–464–4195
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

REGION II—Capital
1775 Duke Street, Suite 4206
Alexandria, VA 22314–3437
Commercial: 703–838–0401
FAX: 703–838–0571
Delaware
District of Columbia
Maryland
New Jersey
Pennsylvania
Virginia
West Virginia

REGION III—Atlanta
7000 Central Parkway, Suite 1600
Atlanta, GA 30328–4598
Commercial: 404–396–4042
FAX: 404–698–8211
Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

REGION IV—Chicago
4225 Naperville Road, Suite 125
Lisle, IL 60532–3658
Commercial: 708–245–1000
FAX: 708–245–1016
Illinois
Indiana
Michigan
Missouri
Ohio
Wisconsin

REGION V—Austin
4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759–8490
Commercial: 512–482–4500
FAX: 512–482–4511
Arizona
Colorado
Iowa
Kansas
Minnesota
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wyoming

REGION VI—Pacific
2300 Clayton Road, Suite 1350
Concord, CA 94520–2407
Commercial: 510–825–6125
FAX: 510–486–3729
Alaska
American Samoa
California
Guam
Hawaii
Idaho
Montana
Nevada
Oregon
Washington

Appendix D—NCUA Forms

NCUA4000—Conversion of State Charter to a Federal Charter—FCU Investigation Report
NCUA4001—FCU Investigation Report
NCUA9500—Application and Agreement for Insurance of Accounts
NCUA9501—Certification of Resolutions
NCUA4008—Charter

NCUA4009—Approval of Organization Certificate & Certification of Insurance
NCUA4012—Report of Official & Agreement to Serve
NCUA4401—Application To Convert from a State Credit Union to an FCU
NCUA4221—Notice of Meeting of Members
NCUA4505—Affidavit
NCUA4506—Ballot for Conversion Proposal
NCUA9600—Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts
NCUA4015—Application for Field of Membership Amendment
NCUA4016—Streamlined Expansion Procedure (SEP) Control Log

BILLING CODE 7535-01-M

OMB No. 3133-0015
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Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

Conversion of State Charter to Federal Charter

FEDERAL CREDIT UNION INVESTIGATION REPORT
(NOTE TO ORGANIZER)

This report must be filled in completely and submitted with the other completed forms listed on page 2 under "SUBMITTAL OF CHARTER APPLICATION." Please refer to page 2 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice of name _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____
   Address _____

3. The credit union will maintain its office at _____
   (City) (County) (State) (Zip)

4. Permanent mailing address of credit union _____

5. Define proposed field of membership (Attach a copy of current state charter/field of membership) _____

6. The board will have (an odd number, 5 to 15) ____ members; the credit committee (an odd number, 3 to 7) ____ members; the supervisory committee (3 to 5) ____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

(Please type or print)

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____, Organizer
Organizer's address _____

NCUA 4000

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons,* must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____ Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)
   _____

3a. Proposed permanent mailing address of credit union _____
   _____

4. Define proposed field of membership _____
   _____
   _____
   _____
   _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate)

GENERAL INFORMATION

1. Potential membership _____.
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____.
   Number of people responding to survey _____.
   Number of people pledging an initial deposit _____.
   Total dollars pledged $ _____.
   Number pledging systematic savings _____.
   Total dollars pledged (per month) $ _____.

3. Number of persons attending the charter-organization meeting _____.

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____.
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For Paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?

_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $ _____ .
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____ .
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries. _____

7. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives? _____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____ (Date) _____ (Date) _____ (Date)

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____.

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years _____. If a large variance, please explain. _____

11. Are there any contemplated changes in the corporate structure of the company? _____. If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____. If yes, please explain _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____. If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____. If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____. Is it incorporated? _____. Where is the headquarters located? _____.

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____. Average attendance _____. Dues required _____.

22. State the geographic territory where members reside. _____

23. Except for religious and labor union groups, obtain a copy of the current bylaws, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provides for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. List the factors or conditions which make this residential unit a logical group for credit union operation. _____

27. If the area to be served by the credit union is adjacent to any major metropolitan area, explain why it is not considered a part of such metropolitan area. _____

28. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____. If so, provide a list of the credit union's names and mailing addresses.

31. List any other financial institutions, i.e. banks, savings and loan associations, etc., located within the proposed community boundaries.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____. If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____.

7. Is an application for a State charter now pending? _____.

8. Has the group ever had a credit union? _____. If so, when did it liquidate or merge? _____.

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____

Telephone No. _____ Date _____

OMB No. 3133-0015
Expiration 9-30-92

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Washington, D.C. 20503

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

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The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or officers of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons*, must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union,

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No.	Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ Chief Executive Officer

_____ Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

NCUA 9501

NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal credit union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal credit unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be as stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have hereunto subscribed our names this

day of _____, 19__.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to administer oaths, at _____
CITY/STATE

this _____ day of _____,

19__.

Signed _____

Title _____
(Notary public or other competent officer)

[1] At least seven signers, none of whom should administer the oath.

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ day of _____, 19 __.

_____

ROGER W. JEPSEN
CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION
(Type or Print)

Proposed _____ Federal Credit Union

☐ Mr. ☐ Ms.
Name
☐ Mrs. ☐ Miss _____
Last First Middle

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____
Street City State Zip Code

Phone + Area Code _____
(Residence) (Business)

Place of Birth _____ Date of Birth _____
City/State

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12
(Grade and High School)

1 2 3 4 ( )
(College)

MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ..... ☐ Yes ☐ No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal credit union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ..... ☐ Yes ☐ No

Estimated number of hours per month you will be able to donate as a volunteer _____.

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ..... ☐ Yes ☐ No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years). _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE:

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____ Date _____ Signature _____ Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, **except** for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

CRIMINAL OFFENSE:

Nature of offense _____

_____

Date of occurrence _____ Date of conviction _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No.

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, 19 ___, by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

3. Standard financial and statistical reports as of _____, 19 ___, or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

   a. Interest rates on loans: _____

   b. Charges incident to making loans which are passed on to borrowers: _____

   c. Maturity limits: _____

   d. Unsecured loan limit: _____

   e. Secured loan limit: _____

   f. Types of security accepted: _____

   g. Requirements of amortization (Repayment requirements): _____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act. _____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union: _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____, State of _____, certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectively, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF FINANCIAL OFFICER)

NCUA 4401

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____, _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____, _____ has been called and will be held at _____ on _____, 19___, at _____ o'clock, ___ .M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to a State-chartered credit union".

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address:_____

BY ORDER OF THE BOARD OF DIRECTORS

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

AFFIDAVIT

PROOF OF RESULTS OF MEMBERSHIP VOTE ON PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____

_____, this _____ day of _____, 19___.

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, 19___.

NCUA 4505

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, 19___, to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and complete the conversion of this credit union from a Federal to a State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

OMB No. 3133
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-)
Washington, D.C. 20503

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____ 19 ____
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence, as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served, including present members). _____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to Item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the State Supervisory Authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No. _____
8. Attach a copy of the latest State supervisory authority examination report or attach a copy of the latest certified public accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month-end preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ . (Identify current year statement with (a) after schedule no. and previous year with (b).)
10. Reserves
    a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. _____ .

b. List below the requested information on delinquent loans for the last four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end or current period).

	19 _____	19 _____	19 _____	Current Yr. to Date _____ 19 ____	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities (including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____ .

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a separate schedule a description of such assets, showing at least the following information: account number, description of item, book value and actual value. Schedule No. _____ .

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No._____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
_____	$ _____	$ _____
_____	$ _____	$ _____
_____	$ _____	$ _____

15. Individual Share and Loan Ledgers:
   a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? Yes ☐ (Stop) No ☐ (Complete b.)
   b. What are the differences as of the month end preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$ _____	$ _____
Totals of the trial balance of the individual ledgers	$ _____	$ _____
Differences	$ _____	$ _____

16. Supervisory Committee:
   a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date _____
      (1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____
   b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____
      (1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____
   c. If it is necessary to complete either 16 a(1) or 16 b(1), please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.
   a. Name of carrier _____
   b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 582 CU-1, other) _____
   c. Basic amount of coverage $ _____
   d. Bond premium paid to (date) _____
   e. What is the amount of coverage required by State law or your bylaws? _____
   f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services
   Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Attach a schedule describing each activity in full. Schedule No. _____.

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____.

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Attach a statement describing the circumstances. Schedule No. _____.

21. Lending policies and practices:
   a. Complete (on page 4) showing the present policies and practices on loans to members.
   b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law; Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21 b.

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		
	$				$	

*If there is more than one type of collateral assign value to each type.

NCUA 9600

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO's Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership c. Joint Ownership

b. Limited Partnership d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

	Name - Charter Number (if FCU)	%	Name - Charter Number (if FCU)	%
a.				
b.				

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

	Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a.				
b.				

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by the CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

Item No. 11 a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principal, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11 b: the schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principal and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified

below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS
STATE CHARTERED CREDIT UNION

Date _____

TO: The National Credit Union Administration Board

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____ (mailing address) _____ (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may by regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirements of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We, further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed, or future officer, committee member or employee is indicted for such an offense.

_____
(Signature) Presiding Officer, Board of Directors

_____
(Print or type Presiding Officer's Name)

_____
(Signature) Recording Officer, Board of Directors

_____
(Print or type Recording Officer's Name)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT

(Attach a separate application for each group included in your request for expansion.)

1. Name and address of credit union: _____

_____

2. Name of group/association to be added: _____

_____

(If Association, include Charter/Bylaws.)

Description of business:

_____

Address: _____

_____

3. Total number of potential employees/members to be added: _____

Sponsor's headquarters location: _____

If relevant, work and/or paid from location: also indicate the number of employees at each location:

_____

_____

_____

4. Distance to nearest credit union service facility group has access to: _____

Address of the nearest service facility group has access to: _____

_____

5. Is the group eligible for membership in <u>any</u> other credit union? NO____ YES_____

If yes, give the name and location of the other servicing credit union. Also include, if applicable, a letter of release from the overlapped credit union. _____

6. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. _____

The regional director may request other documentation appropriate to the situation. This may include current financial statements, branch office financial statements, or other data.

Other comments:

Name and title of credit union board-authorized representative

_____

(e.g., Credit Union Manager/President/CEO-Please print or type)

Signature _____ _____

(Date)

SEP CONTROL LOG

Date credit union received SEP charter amendment:_____

Date Service Started	Date Approved by Board	Board Certification (Authorized Signature)	Name and Location (City, ST) of Sponsor Group	Distance to Nearest CU Branch	Number of Employees/Primary Potential Members	

Control Page Number_____

NCUA 4016

BILLING CODE 7537-01-C

Appendix E—Use of Outside Agents to Solicit Field of Membership Amendments and Members

Purpose

This appendix addresses the National Credit Union Administration's (NCUA) experience with credit unions and arrangements whereby agents outside the organization of the credit union solicit credit union membership in conjunction with the sale of products or services. This section also provides guidelines for these arrangements.

While these guidelines are not mandated by federal law or regulation, they do represent what the NCUA considers to be safe and sound policies and procedures to protect the credit union's assets. Since state laws vary, the guidance may not address every area. Thus, each credit union considering such ventures should obtain a written legal opinion from its counsel, as well as financial counseling from its normal sources.

Background

As credit unions continue to grow and expand their fields of membership to select groups, there has been an increased interest by vendors in mutually beneficial relationships. These business dealings involve the vendor selling services or products and may also include the credit union's financing the sale of items. Generally, such arrangements operate as follows:

- The vendor contacts select group sponsors providing information on the credit union and the insurance or other product to be offered. Alternatively, credit unions may initiate relationships, typically with an automobile dealer, to finance autos. This is commonly called "indirect lending".
- The vendor assists the sponsor in requesting inclusion in the credit union's field of membership. With an indirect lending arrangement, the vendor may have the purchaser prepare a membership application and promptly submits the application, usually by a fax, to the credit union.
- After the field of membership amendment is approved by NCUA or the state regulator, the vendor arranges to meet with employees. In the case of individual membership applications, approval or denial by the credit union's membership officer is required prior to consideration of lending activity. Under no circumstances may a credit union provide membership services conditioned upon subsequent action approving membership.
- The vendor represents the credit union to the employees and enrolls them into membership in accordance with appropriate laws, regulations, and bylaws.
- The vendor explains the products or services being marketed and enrolls the employee in a program or plan. In the case of insurance plans, policies are typically paid by periodic installments, and frequently in one lump sum.
- The vendor arranges for payroll deductions to the credit union. If the employee has an insurance policy or some other plan with periodic installments, generally, the credit union's deduction is increased and arrangements are made for the credit union to forward the appropriate amount to the vendor's company.

These arrangements have been beneficial to some credit unions and vendors. The credit union receives a service—solicitation of members—free of charge. Membership increases and the credit union grows. The vendor has a marketing tool to complement its marketing program. Additionally, in the case of insurance vendors, if the credit union distributes the premiums or other payments directly to the vendor's company, the vendor's paperwork is greatly reduced.

Safety and Soundness Issues

NCUA's experience in these arrangements has shown that potential risk to the credit union exists unless prior planning and internal controls are in place. NCUA has liquidated or taken administrative action in a number of credit unions in recent years when these controls were absent. Some unsafe and unsound practices are described below:

- The credit union did not investigate the vendor's or the vendor's company's reputation, financial soundness, or the authority to do business in the state where the credit union operated. In those cases where NCUA liquidated the credit unions, the companies or firms were of the fly-by-night variety, out to obtain quick profits in short periods of time. Dealing with well established and reputable firms is important if problems arise to member complaints. Additionally, in the event of suits against the company or firm, adequate financial standing can often mitigate the credit union's losses.
- The credit union did not review the programs or products offered to "its" new members. In several instances, the policies were life insurance policies or annuity contracts which called for annual premiums (normally paid by installments) over long periods of time—20 to 30 years. While normal for such contracts, they generally called for limited reimbursement in the event of cancellation, for instance 20 percent reimbursement, if canceled before one year, 45 percent, two years, 55 percent, three years, etc. Many members who enrolled in these contracts did not understand the terms. When they subsequently canceled the policy and received only a 20 percent return, they held the credit union responsible. While the credit union had no legal obligation, it presented public relation problems which could have been avoided.
- The credit union was unfamiliar with the sales techniques used by the vendor to enroll members into the credit union and in the vendor's programs. In the liquidated credit unions mentioned above, unethical methods were used to sign unsophisticated members. It was not uncommon to have them just sign blank forms which included a membership card, payroll deduction authorization, insurance policy, and a loan application and the first year's premium or other payment.
- The credit union did not provide written instructions to the vendor on procedures to enroll members. Thus the vendor contacted groups which the credit union was ill-equipped to serve.
- The credit union authorized the vendor to approve loans en masse to cover first year fees or insurance premiums. NCUA considers this an unsafe and unsound practice which will result in appropriate administrative action. In several liquidated credit unions which had arrangements with insurance vendors, employees were enrolled in the credit union, received a loan to pay the first year's premium and authorized payroll deductions.

The reason the insurance agency proceeded in this manner was to be reimbursed immediately by the carrier for new policies. Such reimbursement ranged from 85 to 105 percent of the first year's premium. Thus an agency that enrolled just 100 new members for $500 per year insurance contracts could have received $42,500 to $52,500 in fees. This desire to obtain reimbursement clouded the vendor's objectivity and resulted in members having unwanted policies, which they generally canceled. At a minimum, since the policy holder received only 20 percent return on the policy, the credit union had a public relations problem collecting its exposed 80 percent. At the worst, the credit union had a loss loan.

- The credit union failed to obtain proper payroll deduction authorizations and authority to remit fees or insurance premiums to the company. In several cases, payroll deduction for all members, even those who chose not to enroll in the vendor's program, were sent to the company first. The company then sent the unauthorized fee or premium deductions to the credit

union. This procedure exposed the credit union to misappropriation of funds by the company, to a potential surety problem, and to an uninsured status until the funds were received in the credit union.

• In another case, a vendor contracted with a credit union to assist credit union members select, locate, and negotiate the purchase or lease of automobiles. Members paid a fee to the vendor during the closing transactions. The vendor also provided marketing assistance to attract select employee groups into the credit union.The vendor was alleged to have falsified and concealed material facts and to have aided prospective credit union members in falsifying credit information to the credit union in attempts to obtain credit. In some cases the prospective member obtained possession of the automobile prior to being accepted as a member and in other cases prior to being approved for the financing. Other operational issues that have led to abuses are the following:

(1) The dealer directly accepting the borrower's payments.

(2) The dealer making payments on behalf of the borrower potentially disguising past due accounts.

(3) The borrower/purchaser applying for the title potentially resulting in an improperly recorded lien.

(4) The dealer financing the down payment thus allowing the borrower to have no stake in the collateral.

(5) The credit union permitting or initiating overdrafts in the vendor reserve or holdback accounts. (Sometimes the credit union requires deposits from the dealer to be held by the credit union to better assure good faith performance by the vendor.)

(6) The credit union placing full reliance on the dealer for credit checks.

(7) Financing indirect loans that are out of the credit union's normal trade area.

(8) The dealer adds costs to the purchase price, such as insurance, warranties, and taxes, thus leaving the borrower with no equity in the car, and the lender with an undercollateralized loan.

(9) Dealers generate a large volume of loans in an attempt to overwhelm credit union staff in hopes that the weaker loans will be approved. (There are instances where dealers resubmit previously denied loans during peak periods in attempts to get them approved.)

(10) The dealer inflates the purchase price or the trade in values, resulting in undercollateralized loans.

(11) An increased potential for making loans to persons who are not eligible to be credit union members exists because of dealer involvement.

(12) By allowing the dealer to negotiate the contract, including interest rates, there is a possibility of inequity among members.

In many instances, the prospective credit union member was pressured to solicit his employer for inclusion into the credit union's field of membership. In certain of these instances, the employer group had existing credit union affiliation with another credit union. In certain other instances, the vendor indicated the prospective member was affiliated with a legitimate group in the credit union's field of membership, when, in fact, the person was not employed by the group. The vendor failed to properly complete required documentation for loans and lease agreements. In some cases the vendor indicated excessively high annual mileage limits in lease agreements.

Recommended Investigative Procedures

Before entering into an agreement with a vendor acting as the credit union's agent in soliciting membership, a federally insured credit union should thoroughly investigate the impact of this action on its financial operations and condition; determine its legal liabilities; clearly define its moral responsibilities; and assure proper control of these activities. The following steps are recommended:

• Thoroughly investigate the financial condition of all corporations, partnerships or other entities involved in the activities. Obtain and review financial statements and credit reports, such as Dun and Bradstreet, on each entity. Consider the need for appropriate bonding by each company.

• Review the organizational structure and reputation of each entity. Included in the review should be a certification that each entity is authorized to do business in the state where the credit union is authorized to do business.

• Review and approve the contracts or policies to be offered. Since members may hold the credit union morally responsible for problems which may occur, the officials should consider the impact of each contract or policy on its public relations with members.

• Determine through a written legal opinion that all forms, documents and procedures used by the credit union to obtain membership, payroll deductions or to transfer funds to a vendor are legal and protect the credit union.

• Ascertain the credit union's liability under the Holder in Due Course rule.

• Determine the type of recourse agreement (full recourse, limited recourse or without recourse) that the credit union will enter into with the vendor.

• Develop cash flow and budget projections showing the effect of increased membership on the credit union's financial condition and ability to serve new members.

• Track by individual vendor, loans, loan delinquency and loan losses for each financing derived from the indirect lending relationship.

• Develop procedures to monitor the activities of vendors as discussed below under Agreements.

• Develop brochures and handouts to be presented to potential members. Among these should be a disclaimer that the credit union does not endorse the products or services and that the vendor can make no commitments regarding membership approval or the granting of loans. Other materials to be presented are discretionary by the credit union.

• Obtain written confirmation from surety that such activities are bondable.

• Ensure the individual in charge of indirect lending is experienced with indirect financing or contacts another credit union with experience in this type of lending.

• Start slow, utilizing only one or two reputable new car dealerships.

Agreements

All arrangements with a vendor should be in writing and reviewed by credit union legal counsel. Such agreements should include, but not be limited to, the following:

• Scope of the vendor's authority to contact sponsors, such as limits on sponsor's assets, number of employees/potential members, financial condition, organizational structure, geographical location, and sponsor stability in the area.

• Procedures for the vendor to follow in contacting sponsors. These should require the vendor to present any product or service as separate and distinct from credit union membership and to state that inclusion in the field of membership is subject to regulatory approval. There should be absolute indication that the credit union is not endorsing any product or services marketed by the vendor.

• Procedures for vendors to follow once a sponsor is included in the credit union's field of membership.

• Procedures for automobile dealers to follow when shopping sales contracts to lenders.

• Understanding and agreements on fees or points paid to automobile dealers.

• Agreement that products or services to be offered and materials, brochures and handouts to be presented by the vendor are to be approved, in advance, by the credit union.

• Agreement that all approved brochures and handouts of the credit union will be distributed.

• Agreement that credit union representatives may accompany the vendor on contacts with sponsors and on membership enrollments.

• Agreement that the credit union may disqualify any vendor or vendor's representative from representing the credit union. Generally such an agreement will include a preliminary approval process as well as monitoring standards to include necessary credit union training.

• Procedures for auditing indirect lending activities with the dealer.

• Any other standard contractual agreements necessary to contract law.

Summary

Credit unions and vendors can engage in mutually beneficial contractual agreements provided that adequate planning and internal controls are instituted. Credit unions engaging in these activities should plan, direct, and control these activities in a safe and sound manner.

Appendix F—Trade Associations

Credit Union National Association (CUNA), P.O. Box 431, Madison, WI 53701, 608–231–4000

National Association of Federal Credit Unions (NAFCU), 3138 N. 10th Street, Suite 300, Arlington, VA 22201, 703–522–4770

National Association of State Credit Union Supervisors (NASCUS), 1901 North Fort Myer Drive, Suite 201, Arlington, VA 22209, 703–528–8351

National Federation of Community Development Credit Unions (NFCDCU), 120 Wall Street, 10th Floor, New York, NY 10005–3902, 212–809–1850

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Friday
June 3, 1994

Part V

Department of Education

National Institute on Disability and Rehabilitation Services; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, 84.133N, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goals. National Education Goal 6 states: By the Year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

The statute requires that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries—34 CFR Parts 350 and 359.

Research Training and Career Development Program—34 CFR Parts 350 and 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

ELIGIBLE APPLICANTS: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Research Fellowships, CFDA No. 84.133F]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Fellowships	11/15/94	10	$40,000	12

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

(1) Investigations of the unique rehabilitation-related needs of individuals with disabilities from minority backgrounds.

(2) Investigations or demonstrations of innovative services for individuals with disabilities from minority backgrounds.

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Field-Initiated Research, CFDA No. 84.133G]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Field-Initiated Research	11/1/94	20	$125,000	36

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Program Title: Special Projects and Demonstrations for Spinal Cord Injuries.

CFDA Number: 84.133N

Purpose: The Special Projects and Demonstrations for Spinal Cord Injuries program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries. As described more fully in 34 CFR 359.11, recipients of awards under this program must establish a multidisciplinary service system, demonstrate and evaluate both the services and the costs and benefits of those services, establish a research environment within the system, demonstrate and evaluate the application of improved methods and equipment, demonstrate methods of community outreach and education, and participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities within the scope of model demonstration systems for SCI. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are to address one or more of the following problems within the research, demonstration, services, or data collection aspects of the model SCI system project.

(1) Violence-related spinal cord injuries;

(2) Techniques to maximize the benefits of interactions with independent living programs to achieve community reintegration;

(3) Substance abuse among individuals with SCI;

(4) Disability and rehabilitation-related problems of persons with SCI from minority backgrounds;

(5) The role of families and personal advocacy in successful community reintegration; and

(6) Techniques to facilitate the adoption of the SCI systems model of care into regular health care delivery practices.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this model SCI Systems program.

(a) *Project Design (20 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service Comprehensiveness (20 points).* The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to persons with severe disabilities within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of Operation (15 Points).* The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(d) *Quality of Key Personnel (10 points).* The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in Section 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(e) *Adequacy of Resources (10) points.* The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/Cost Effectiveness (10 points).* The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate).

(g) *Dissemination/Utilization (5 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation Plan (10 points).* The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Eligible Applicants: Public and other nonprofit agencies and organizations are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Special Projects and Demonstrations for Spinal Cord Injuries, CFDA No. 84.133N]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Special Projects and Demonstrations for Spinal Cord Injuries	10/14/94	8–13	$230,000–375,000	60

Program Title: Research Training and Career Development Program

CFDA Number: 84.133P

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.

2. Training individuals with disabilities from minority backgrounds in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(l) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology, are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(l) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Research Training and Career Development Program, CFDA No. 84.133P]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Training and Career Development Program	10/03/94	3	$150,000	36

Instructions For Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative. Additional Materials.

Estimated Public Reporting Burden:

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–5450. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Authority: 29 U.S.C. 760–762.

Dated: May 31, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the Federal Register. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR and SCI grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Applicants for projects in the Research Training and Career Development program are limited to an indirect rate of 8 percent. There are no indirect charges permitted in the Fellowship program.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE_____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries (CFDA No. 84.133N) 34 CFR Part 359.

Research Training and Career Development Program (CFDA No. 84.133P) 34 CFR Part 360.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind, specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 94–13513 Filed 6–2–94; 8:45 am]
BILLING CODE 4000-01-C

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Standard Form - LLL-A

federal register

Friday
June 3, 1994

Part VI

Department of Justice

Civil Rights Division

The American With Disabilities Act Technical Assistance Grants to Promote Voluntary Compliance With the Act; Notice

DEPARTMENT OF JUSTICE

Civil Rights Division, Public Access Section

The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Public Access Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

PURPOSE: The Public Access Section of the Civil Rights Division, United States Department of Justice (DOJ), announces the availability of up to $2.25 million to develop and implement projects to inform and educate covered entities and individuals with disabilities about their responsibilities and rights under title II and title III of the Americans with Disabilities Act of 1990 (ADA) and to facilitate voluntary compliance with titles II and III of the Act and the Department's implementing regulations. The term "covered entities" refers to businesses, commercial properties, institutions, State or local governments or their agencies, and other organizations or enterprises that have responsibilities under title II or title III of the ADA.

Grants will be awarded to selected applicants who propose cost-effective and efficient methods of educating entities and individuals with responsibilities and rights under the ADA as well as professionals, such as practicing architects, attorneys, building contractors and others, who provide services to these groups and may assist them in understanding and complying with the requirements of the Act. The primary objective of this program is to encourage and facilitate voluntary compliance with titles II and III of the ADA and the Department's implementing regulations. Only submissions that propose projects of national scope or significance will be considered.

In fiscal year 1994, the Department is seeking grant applications in the following six (6) priority areas:

(1) Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level;

(2) Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional level;

(3) ADA education for state and local historic preservation offices, committees, boards and zoning and code officials involved in historic preservation decisions;

(4) ADA education for staff of legal services offices, legal aid societies, and public interest law centers;

(5) ADA education and pilot project for professional mediators;

(6) "The ADA: Civil Rights Law" educational audiovisual materials.

Projects must propose to conduct activities under the grant that have been specifically tailored to meet the particular needs of the targeted audience. Detailed information regarding these specific priorities may be found in the *Program Priorities* section of this solicitation.

Although the Department has identified the above priorities for grant awards during FY 1994, other meritorious projects offering innovative methods of providing ADA Technical Assistance are eligible for consideration. In order to be considered, projects must have a clear statement of need and have national scope or significance.

The Department anticipates that grants will be awarded in amounts ranging from $85,000 to $200,000.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ADA Technical Assistance Program Manager, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY). This notice and other related information, with the exception of standard forms, are available in alternate formats, e.g., large print, braille, audiotape, and computer disk. With the exception of standard forms, this information may also be accessed through the Civil Rights Division's electronic bulletin board at (202) 514–6193.

Background and Program Description

On January 26, 1992, the major provisions of titles II and III of the Americans with Disabilities Act (ADA) went into effect. The ADA provides legal protection to individuals with disabilities in the areas of public accommodations, commercial facilities, State and local government services, transportation, and employment. Title III prohibits discrimination on the basis of disability in a broad range of public accommodations, commercial facilities and certain transportation services. Title II prohibits discrimination on the basis of disability in State and local government programs and services, including transportation, and State and local government employment. The employment (title I) and transportation (title II, Subpart B) provisions of the ADA are regulated by other Federal agencies and are not the subject of this Notice.

Section 506 of the ADA requires that the Department of Justice render technical assistance to entities and individuals that have responsibilities or rights under title II (subtitle A, State and local government services) and title III (public accommodations and commercial facilities) of the ADA.

Pursuant to this requirement, the Department provides a variety of ADA-related services and information, including:

—A telephone information service (for voice and TTY callers) through which members of the public may obtain recorded information and place orders for ADA materials 24 hours/day and may discuss questions they have about the ADA with information specialists during certain business hours. This service has recently been converted to a toll-free "1–800" number and the number of hours of staffed service has been expanded;

—A speaker's bureau through which organizations can arrange to have ADA experts from the Civil Rights Division speak on a variety of ADA issues; and

—Distribution of written materials, including the Department's regulations implementing titles II and III, technical assistance manuals for titles II and III, an ADA Questions and Answers booklet, and other reference materials. These materials are available in standard print, large print, braille, audiotape, and computer disk. They may also be obtained through the Civil Rights Division's electronic bulletin board.

Under section 506(d) of the Act, the Department has authority to award grants to individuals and non-profit entities for the purpose of supplementing the Department's technical assistance efforts. The Technical Assistance Grant Program is designed to develop and implement cost-effective and efficient strategies to disseminate information about the responsibilities and rights of covered entities and individuals under titles II and III of the ADA, with the goal of fostering understanding of, and facilitating voluntary compliance with, the ADA nationwide.

This grant program is designed specifically to increase the level of knowledge of the ADA in order to ultimately increase the level of voluntary compliance with the ADA. The program is not intended to fund or support site-specific compliance implementation (e.g., funding to make

specific facilities more accessible). Nor is it intended to fund or support inspections, reviews, or tests to determine whether an entity is meeting its compliance obligations. Proposals to conduct projects of these sorts will not be considered.

Since the initiation of the grant program in 1991, the Department has awarded grants to 30 non-profit organizations. The recipients have included a wide range of groups, and the types of projects previously funded include: Projects to develop and disseminate educational materials, including detailed manuals, brochures and videotapes, to explain the regulations and how to comply with the ADA; projects to disseminate existing information to targeted audiences; projects to develop and conduct ADA training programs and seminars; projects to operate telephone information lines to answer various questions about the provisions of the ADA; and projects to develop and incorporate ADA materials into professional educational curricula and programs.

Grantee projects have targeted various audiences of persons with responsibilities under title III or title II of the ADA, persons with disabilities with rights under the ADA, and persons who, because of their areas of professional or technical expertise, provide services that may assist these groups in understanding and complying with the requirements of the Act.

Title III projects have been directed toward educating owners and operators of restaurants and bars, hotels and motels, retail stores, grocery stores, professional offices, recreation and fitness centers, museums and other places of collection, travel and tour agents, hospitals and health care providers, service providers for elderly persons, day care centers, small shops and stores, and large commercial properties.

Title II projects have worked toward educating mayors and governing bodies of U.S. cities with populations over 30,000 and towns with populations under 10,000, law enforcement agencies, 911/emergency response operators, state courts, state social service agencies, public libraries, and persons involved in testing for licensure and certification purposes.

While some projects have focused on educating people with disabilities about their rights under titles II and III of the ADA, others have educated covered entities with responsibilities under the ADA on how to accommodate people with different kinds of disabilities, such as people with mobility impairments, manual impairments, hearing impairments, speech impairments, vision impairments, seizure disorders, mental retardation, mental illness, and people with cognitive, developmental, or learning disabilities.

Other projects have been directed toward persons who can assist others in complying with the ADA, including professors and students in architecture, interior design, industrial design, and landscape architecture schools and programs; state and local building code officials; disability advocates; librarians; and community mediators. Several grant recipients have directed technical assistance toward persons who speak Spanish and other non-English languages.

Some effective strategies used by grantees have been to integrate ADA Technical Assistance materials into established programs and the creation of an innovative project conducted on a statewide basis, that can be studied and replicated by others nationally. For example, the Police Executive Research Forum is creating a set of materials, with some material specifically developed to be integrated into police academy training and others for use in on-the-job roll-call training. The set of materials includes a series of modules on protecting the rights of persons with seizure disorders, speech and hearing impairments, and mental illness. The Chief Officers of State Library Agencies is creating a single source collection of ADA materials that will be available to the public nationwide through their local libraries. The National Association of Towns and Townships is producing ADA materials to train regional and state ADA technical assistance providers to assist them in educating officials from small towns with fewer than 10,000 residents on how to comply with the ADA.

The American Association of Retired Persons will create materials and conduct training sessions throughout the country to educate older persons with disabilities about their rights under the ADA. The results of a South Carolina project, which partners different State agencies and a state-based advocacy organization for persons with mental illness to examine and correct ways in which social service and public benefit programs discriminate against persons with mental illness, will be disseminated nationwide.

A description of all projects, including a list of materials that have been or are being produced by grant recipients, may be obtained by calling 1-800-514-0301 (Voice) or 1-800-514-0383 (TTY) or the electronic bulletin board at (202) 514-6193.

Applicants should be aware that the Department does not fund projects to research or resolve issues that are outside the scope of the Department's current ADA regulations and court interpretations. For example, the Department would not fund a project concerning the design of accessible physical environments for children because standards have not yet been adopted by the Department in this area.

Only proposals to conduct projects of national scope or significance will be considered. For example, a professional or trade association at the national level that proposes to target educational information to its membership nationwide might be funded. A local or state trade association with no national affiliation or reach would not be funded, unless the local or state group could adequately demonstrate its ability to draw national attention to, and participation in, its project.

The Department is particularly interested in receiving proposals that: specifically address how members of minority communities will be included within the population targeted by the applicant for receipt of technical assistance; reflect an ability to begin project activities in an expedited manner; utilize materials already developed by Federal agencies and their grantees or contractors; represent joint ventures between organizations that represent persons with disabilities and organizations that provide services that may assist covered entities in their compliance efforts; and engage national membership organizations in supporting the project's objectives.

Eligible Applicants. This grant competition is open to individuals and to non-profit organizations, including trade and professional associations or their subsidiaries, organizations representing State and local governments or their employees, other organizations representing entities covered by the ADA, State and local government agencies, and national and local organizations representing persons with disabilities.

Grant Period and Award Amount. The period of performance will be twelve months from the date of the grant award. A total of $2.25 million is available for this technical assistance grant program; it is anticipated that grants will be awarded in amounts ranging from $85,000 to $200,000. However, the estimated funding level in this notice does not bind the Department of Justice to make any awards or to any specific number of awards or funding levels.

Application Deadline. Applications must be received by the close of

business (5:30 p.m. EST) on August 2, 1994 at the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, or 1425 New York Ave., NW., room 4039, Washington, DC 20035–6738. Applications may not be sent by Fax. Applications received after 5:30 p.m. on August 2, 1994 will not be considered for award, even if the application was postmarked before that date. Incomplete applications will not be considered for award. In order to be considered complete, an original and two copies of the application packet described in the *Application Requirements* section must be submitted.

Program Priorities

Since the inception of the ADA Technical Assistance Grant Program in 1991, the Department has funded over 30 projects, with the primary focus being to educate entities and individuals with responsibilities and rights under titles II and III of the ADA. Many of the audiences targeted have been those with title III responsibilities, including owners and operators of retail stores, supermarkets, hotels and motels, day care centers, and health care and other service providers. Projects directed toward educating those with obligations under title II have included law enforcement agencies, state court systems, 911/emergency response operators, city and town governing bodies, and publicly funded hospitals and other health care services. Targeted audiences have also included people with disabilities with rights under titles II and/or III.

As the purpose of the Grant Program is to promote and facilitate voluntary compliance with the ADA, the Department believes that it is necessary to identify, educate and work with professionals at the local, State, and regional level who, because of their professional or technical expertise, provide services to the above audiences and may assist them in understanding and complying with the requirements of the Act. For this reason, the Department has expressed a particular interest in receiving proposals that target this specific audience in the following six priority areas:

Priority 1: Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level. Architects and other design professionals play an essential role in ensuring that newly constructed facilities and additions or alterations to existing facilities are designed and built in accordance with the ADA Standards for Accessible Design. Businesses, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of the architect; they expect that the professional will design a building or facility that will meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design.

With access to educational materials and services, architects and design professionals at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies to be used by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's *ADA Standards for Accessible Design*, and titles II and III *Technical Assistance Manuals*; the Access Board's *ADA Accessibility Guidelines Checklist* and various *Technical Assistance Bulletins* (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's *Accommodating All Guests* compliance manual, the Food Marketing Institute's *ADA Starter Kit for Supermarkets* and the *ADA Compliance Manual for Supermarkets*, and the National Restaurant Association's *ADA: Answers for Foodservice Operators* compliance manual and *A Warm Welcome* videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous *ADA Design Tech Sheets* (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the *Title II Action Guide for State and Local Governments*.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist, or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies.

Despite the existence of these materials, many of which are available free of charge from the Department and other Federal agencies, many professionals at the local level are unaware of their availability and continue to design and build facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 1 is to develop a nationwide system to inform architects and design professionals about the ADA and the availability of these informational materials and services to ensure dissemination of existing ADA materials to practicing architects and other design professionals at the local level. The project should utilize existing channels, such as professional and trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of design professionals as possible of the availability of informational materials and services and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials to targeted audiences, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to architectural libraries, the presentation of information about the ADA and the availability of Federal resources and materials through computer networks and electronic media, etc.

Priority 1 is an ADA informational materials dissemination project for architects and design professionals at the local, State, and regional levels that shall include the following major components:

—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance Board and other Federal agencies as appropriate that the applicant intends to publicize to the targeted populations;

—Identify professional and trade organizations that serve architects and design professionals that have regional, state and local affiliations through which information and materials could be disseminated;
—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional levels;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including professionals serving racial and ethnic minority communities;
—Develop a plan to effectively publicize and disseminate the availability of material available from Federal agencies and their grantees, utilizing, to the extent possible, existing dissemination mechanisms for architects and design professionals including professional and trade journals, regional and national conferences, etc. Such a plan should ensure that the dissemination of materials will continue after the grant period has ended;
—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform architects and design professionals of the availability of ADA materials;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to professionals at the local level following the conclusion of the grant period;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 2: Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional levels. Building contractors, construction tradespeople, building inspectors and plan reviewers play an essential role in ensuring that new construction, additions, and alterations are accessible. Many smaller projects, particularly alterations, are accomplished by contractors and tradespeople without the use of architects or other design professionals. Business owners, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of builders to meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design; and contractors and tradespeople rely on building inspectors and plan reviewers for advice and assistance in understanding and applying these rules.

With access to educational materials and services, building contractors and skilled construction tradespeople at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies for use by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's ADA Standards for Accessible Design, and title II and III Technical Assistance Manuals; the Access Board's ADA Accessibility Guidelines Checklist and various Technical Assistance Bulletins (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's Accommodating All Guests compliance manual, the Food Marketing Institute's ADA Starter Kit for Supermarkets and the ADA Compliance Manual for Supermarkets, and the National Restaurant Association's ADA: Answers for Foodservice Operators compliance manual and A Warm Welcome videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous ADA Design Tech Sheets (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the Title II Action Guide for State and Local Governments.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies.

Despite the existence of these materials, many of which are available free of charge from the Department of Justice and other Federal agencies, many individuals at the local level are unaware of their availability and continue to build or alter facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 2 is to develop a nationwide system to inform building contractors, construction tradespeople, building inspectors and plan reviewers about the ADA and the availability of these informational materials and services to ensure the dissemination of existing ADA materials to contractors and others at the local level. The project should utilize existing channels, such as trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of contractors and others as possible of the availability of the material and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to libraries serving the target population, the presentation of information about the ADA and the availability of Federal resources and materials, and making the same available through computer networks and other electronic media.

Priority 2 is an ADA informational materials dissemination project for building contractors, construction tradespeople and others at the local, State, and regional level that shall include the following major components:
—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance

Board and other Federal agencies as appropriate that the applicant intends to publicize to the populations to be served by the project;

—Identify professional and trade organizations serving the targeted population with regional, State and local affiliations through which information and materials could be disseminated;

—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional level;

—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;

—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;

—Develop a plan to effectively publicize and disseminate the availability of material available from Federal resources and their grantees utilizing, to the extent possible, existing dissemination mechanisms for the targeted population including professional and trade journals, regional and national conferences, etc.;

Such a plan should ensure that dissemination will continue after the grant period has ended;

—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform the targeted population of the availability of ADA materials;

—Create articles on the requirements of the ADA for publication in media appropriate to target audience;

—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to the targeted population at the local level following the conclusion of the grant period;

—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 3: ADA education for State and local historic preservation offices, historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions. Staff and officials of State and local historic preservation offices, members of historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions need guidance on effective methods of complying with the ADA without destroying the historic nature of the facility or element. While some educational materials currently exist, the need for these audiences to learn about and understand how to implement practical solutions remains paramount.

The goal of Priority 3 is to undertake a nationwide effort to educate State and local historic preservation offices, historic preservation committees and boards, and zoning and code officials involved in historic preservation decisions on the requirements of the ADA and how to maintain the integrity of the historic property while providing accessibility as required under the ADA that promotes independence and dignity. Projects of this type should focus specifically on providing practical solutions to access problems faced by historic properties. Projects to develop and disseminate educational materials, to develop and conduct training using existing materials, or to develop materials and conduct training will be considered.

Priority 3 is an ADA education project for historic preservation officials that shall include the following major components:

—Develop educational materials that focus on solutions to access problems specific to properties such as historic museums, historic buildings housing public accommodations and those housing State and local government programs. The materials shall illustrate how people with disabilities use the built environment and how the provisions of the ADA Standards for Accessible Design can be effectively used to provide mainstream access without destroying the historic significance of the building or facility;

—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;

—Identify and coordinate with established professional organizations, such as the National Trust for Historic Preservation, the National Conference of State Historical Preservation Officers, and State Historical Commissions, etc., through which information and materials could be disseminated;

—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;

—Utilize existing federally approved materials to the maximum extent possible;

—Develop and implement a strategy to disseminate the materials nationally, coordinating with other state and national historic preservation organizations as appropriate;

—If the project includes a training component, identify topics to be covered and the rationale for selecting those topics and develop and implement a plan to select trainers;

—If the project includes training, a minimum of five regional sessions should be held. Criteria to be used to select the training locations should be carefully thought out and described in the applicant's proposal;

—Develop and implement a strategy to publicize information about the ADA and the availability of materials and training sessions nationally through organizations, print and electronic media;

—Create articles on the requirements of the ADA for publication in media appropriate to target audience;

—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 4: ADA education for staff of legal services offices, legal aid societies, and public interest law centers. For a person with a disability, access to technical assistance and good legal advice about the ADA is severely limited by the lack of public interest lawyers trained in the requirements of the ADA. The right to legal advice and their right to file private lawsuits is a critical component of the ADA.

According to the latest census data, over 20% of the 12.9 million people of working age reporting the presence of a work disability have family incomes below the Federal poverty threshold. Because of this, people with disabilities are consistently being referred to public interest law centers, legal services offices, and legal aid societies for affordable legal assistance, and yet the vast majority of staff at those offices have not been even minimally trained on the requirements of the ADA. For the high percentage of individuals with disabilities who rely on low-cost or free legal services, it is critical to the successful implementation of the ADA that these lawyers receive training on the ADA.

The goal of Priority 4 is to develop and conduct a nationwide training program for staff and boards of legal services offices, legal aid societies, and public interest law centers about titles II and III of the ADA.

Priority 4 is an ADA project to educate legal services, legal aid societies and public interest law centers that shall include the following major components:

—Develop and conduct a minimum of five regional ADA training seminars;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including legal groups serving racial and ethnic minority communities;
—Develop innovative approaches to reach the widest possible audience with funds available;
—Identify and select for training staff and board members of public interest law centers, legal services groups, and legal aid societies from throughout the United States. The following factors should be considered in the selection process: geographical representation from the 50 states; representation from urban, suburban, and rural areas; representation from legal groups serving citizens with minority backgrounds;
—Develop a plan for publicizing the availability of the training, using, to the extent possible, existing dissemination mechanisms for legal services and public interest law centers including publications, professional journals, local, state, and national meetings, etc.;
—Develop training materials and activities appropriate to public interest lawyers, utilizing existing federally approved materials to the maximum extent possible;
—Provide training to selected staff and board members of public interest law centers, legal aid societies, and legal services groups on title II and title III of the ADA and on recent policy developments;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 5: ADA education and pilot project for professional mediators. The ADA encourages the use of means other than litigation to resolve ADA disputes. Professional mediators provide an alternative forum for complainants and respondents to resolve their misunderstandings or disagreements about the ADA's requirements. Effective use of professional mediators trained to mediate ADA cases can help bring about compliance with the ADA, while saving both parties from the high costs, delays, and inconveniences often associated with litigation.

The goal of Priority 5 is to train a select number of professional mediators nationwide about title III of the ADA, refer title III cases to these mediators for mediation, monitor the outcome of mediation efforts, and evaluate and disseminate the evaluation of the project to mediators and other interested parties nationwide, so that the project can be effectively replicated in other areas of the country.

Priority 5 is an ADA education and pilot project for professional mediators that shall include the following major components:

—Work with and through one or more national organizations representing professional mediators to assist in publicizing the project to mediators who may participate in the project, as well as to assist in disseminating the final evaluation of the project to mediators and other interested parties nationwide;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including mediators serving racial and ethnic minority communities;
—Develop criteria to be used to select the mediators to participate in the project;
—Develop and implement an ADA training program and provide follow-up technical assistance to the participating mediators;
—Develop and implement a plan for referring cases to the participating mediators and for monitoring the status of the mediators' ADA project-related caseloads;
—Provide mediation for a specified number of cases, at no cost to the disputing parties, within nine months after the completion of training;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;
—Develop a plan for disseminating the training materials nationwide.

Priority 6: "The ADA: Civil Rights Law" educational videotape. Lack of recognition that the ADA is a civil rights law, long held myths and stereotypes, and ignorance about the attitudinal and physical discrimination that people with disabilities face in their daily lives—not being able to enter the building to attend a child's school play; not being allowed to play on a sports team or participate in the town meeting; not being able to order a hamburger, drop off dry cleaning, or to rent a car—are thought to be major impediments to voluntary compliance with the ADA.

The goal of Priority 6 is to produce and disseminate educational audiovisual materials illustrating discrimination, stereotypes and attitudinal barriers encountered by people with disabilities. The goal of this project is to identify the ADA as a civil rights law, distinct from a "benefit program", with the same historical background and battles associated with other types of civil rights legislation. The project will draw comparisons between discrimination encountered by people with disabilities and other protected classes of individuals and the historical struggle people with disabilities and others faced to gain the right to equality. Finally, the project will focus on the impact that complying with the ADA can have on changing stereotypes, eliminating barriers, and increasing access to goods, services, and activities.

Educating the public about the abilities of people with disabilities to function well in an accessible environment and dispelling oft held myths and stereotypes can lead to increased voluntary compliance with the ADA. Materials developed in this project shall portray persons with disabilities in a positive manner and will be used to increase the general public's awareness of disability, accessibility and the ADA and its historical place in the development of civil rights legislation. The project should also strive to increase the level of communication between covered entities, people with disabilities, and providers of consultation services.

Priority 6 is an ADA educational audiovisual project that shall include the following major components:

—Create and disseminate broadcast quality educational videotapes, identifying the ADA as a civil rights law with protection for people with disabilities parallel to that provided under other civil rights legislation;
—Edit to provide videotapes of varying lengths, suitable for use in a variety of broadcast situations (e.g., short segments to be used to promote the videotape or on magazine type

programs, longer segments for viewing by audiences attending a meeting, etc.);

—Identify target audience and state explicitly the number of people expected to be served in the course of the project's activities;

—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;

—Identify types of attitudinal and physical discrimination that prevent people with disabilities from gaining equal opportunity and possible methods to eliminate discrimination;

—Illustrate the increased independence persons with disabilities experience when barriers are removed;

—Identify and select professional, civic and business organizations to disseminate the video through their local, state and regional affiliations;

—Identify and select public and cable television networks to air and disseminate copies of the videotape for local, regional, and national viewing;

—Develop and implement a strategy for disseminating the video to selected organizations;

—Develop a plan to publicize the project and the product nationally through print and electronic media;

—Create articles on the requirements of the ADA for publication in media appropriate to target audience;

—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;

—Develop a plan to disseminate the results of the project.

Other Meritorious Projects. The Department also seeks grant applications involving other meritorious projects that offer innovative methods of providing ADA Technical Assistance to entities and individuals with rights and responsibilities under the ADA and professionals who provide services to these groups and may assist them in understanding and complying with the ADA. Only those projects with a clear statement of need and of national scope or significance will be considered. Other Meritorious Projects shall include the following major components:

—Statement of need. Applicants should indicate why their project is needed and how they have determined that the issues or topics they intend to address are, in fact, the issues or topics that will best serve the needs of the population for whom the project has been designed. Some populations, for example, may need to be made aware of the ADA and be provided with basic information, while others may be familiar with the basic legal requirements, but need information on how to translate the legal standards into concrete, practical solutions for achieving compliance. Others may need in-depth education on specific aspects of the law;

—Description of the target audience by describing such factors as geographic scope, type of population (type of business, type of governmental unit, type of disability, type of professional service offered), or other relevant characteristics. Applicants should also state explicitly the number of people expected to be served in the course of the project's activities;

—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;

—Provide a statement of goals and objectives of the project. Applicants should describe in concrete terms what is to be accomplished during the project period. The anticipated impact on voluntary compliance efforts should also be clearly articulated;

—Develop a plan to disseminate the materials or results of the project nationwide;

—Work with and through established organizations, where possible, to reach the largest segment of the population possible;

—Utilize existing Federally-approved materials to the maximum extent possible;

—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Selection Criteria

Applicants will be evaluated in each of the following four selection criteria areas for a total of 100 points:

Project Strategy and Plan of Action (50 Points)

Applicants must demonstrate a thorough understanding of the grant proposal priority, including the background, intended audience and intended approach. Applicants applying under the Other Meritorious Project category must demonstrate an in-depth knowledge of the target audience and their specific needs. Project goals and expected outcomes should be clearly articulated. Clarity, quality, and appropriateness of the plans, methodologies, and procedures to achieve the goals listed in the application will be carefully considered. Plan of action must be sound and well-reasoned, with evidence of the ability to implement plan immediately and complete the project in a timely manner. Applicants must demonstrate the ability to produce and/or disseminate information and materials within the period of performance. Project strategy must include a clear plan for objectively evaluating the effectiveness of the project, as described in the *General Requirements for Grant Recipients* section of this solicitation.

Staff Capability (25 Points)

Applicants must provide evidence of qualified personnel with particular experience in the areas addressed in the application. The application must contain necessary position descriptions, resumes, and assurances of availability of staff (existing and contract staff) with appropriate competencies and experience. Duties outlined for grant-funded positions must be clearly appropriate to the scope of the work being carried out under the project.

Organizational Capability and Management Plan (20 Points)

Applicants must demonstrate the ability to effectively reach and work with the targeted audience and offer evidence of proven organizational ability to provide high quality results utilizing appropriate key personnel. Applications must include a management plan that provides evidence of project control by management, efficient and timely use of staff and other resources, and effective quality control mechanisms.

Resources/Facilities/Equipment (5 Points)

Applicants must demonstrate the availability and appropriateness of resources (other than personnel), physical facilities, and equipment proposed to be used to carry out the project.

General Requirements for Grant Recipients

The following general grant program requirements should be considered by each applicant in developing both its project timeline and budget. Successful applicants must adhere to all conditions as specified; any deviation from the requirements in this section must be negotiated with DOJ.

Grantee Orientation and Coordination. Grantees are expected to coordinate their project activities, where

appropriate, with other Federally sponsored ADA technical assistance activities, including those of the Department of Justice (DOJ), the National Institute on Disability and Rehabilitation Research (NIDRR), the Architectural and Transportation Barriers Compliance Board (ATBCB), the Equal Employment Opportunity Commission (EEOC) and their grantees. The purpose of this coordination is to avoid duplication of effort, to utilize materials already developed by Federal agencies and grant recipients, and to otherwise refer to and take advantage of ADA resources that have already been developed. Additionally, successful applicants will receive an orientation that will familiarize them with projects being undertaken by other successful applicants. Thereafter, 1994 grantees will be expected to exchange information and provide support to each other where appropriate.

Evaluation. One goal of this grant program is to determine which education, information dissemination, and compliance assistance strategies are most effective in reaching as many persons as possible in the targeted population with information that serves their particular needs. It is therefore essential that each project describe reliable and objective criteria to evaluate the effectiveness of the project at the conclusion of the period of performance and to provide this information to the Department.

Post-Award Monitoring. The Department intends to provide grant recipients with the maximum amount of post-award guidance and technical assistance possible within budget and staff constraints. Within approximately one month of the grant award, the Department will conduct a one-day training session on the ADA and grant management procedures. Each grant recipient will be invited to send two staff persons to this training session. Funds for travel to Washington, D.C. for this training should be included in the proposed grant budget. Applicants are also advised that DOJ staff will make periodic site visits to provide grant recipients with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the Public Access Section in the administration of this program. Applicants are advised that copies of the quarterly progress reports sent to OJP must also be sent to the Public Access Section.

DOJ Review of Grantee Materials. All materials used or developed by grant recipients must be approved by DOJ in advance of use. Applicants should anticipate careful review of any newly developed materials by the Department to ensure that the materials are legally accurate and should allow ample time in their proposed project schedules for this review.

Particular attention should be paid to budgetary and staffing needs to ensure that materials to be disseminated will reach the targeted population in a timely manner during the grant period.

Availability of Existing DOJ Materials. Publications that are currently available free of charge from the Department of Justice (DOJ) will be provided to the grantee as resources permit. If an applicant intends to disseminate materials of a nature similar to materials produced by previous DOJ grant recipients or recipients of grants from other Federal agencies, including the National Institute on Disability and Rehabilitation Research, it should coordinate such requests with the Department. In general, funds for the reproduction of such materials should be included in the proposed grant budget.

Copyrights. Grant recipients are free to copyright any materials they develop, if they so choose, and may continue to reproduce and distribute such materials after the grant period is over. Applicants should be aware that DOJ retains the right to reproduce their materials and to disseminate them to the public at its will, without payment of royalties to the grantee.

Program Income. Grantee recipients may charge for grant-related activities and products (e.g., materials developed and disseminated, workshop or training registration fees), as long as all income derived from such activities and products is added to funds committed to the grant and its activities. Specifically, this program income (gross income earned by the grantee, during the funding period, as a direct result of the grant award or its activities) must be used for purposes that further eligible program objectives (e.g., obtaining equipment or other assets required for the program). Program income may not be used to support or further a grantee's general organization, its programs or its services.

Consultative Services. Applicants who offer consultative services for a fee to assist covered entities in complying with their ADA responsibilities or who provide legal representation services for free or for a fee to, or on behalf of, persons with disabilities should include a statement briefly describing the services provided.

Alternate Formats (Print and Audiovisual). All materials produced in standard print must also be produced in large print, in Braille, and on audiotape in proportion to anticipated demand by persons with vision impairments in the targeted population(s). Audiotapes of lengthy materials must be voice- or tone-indexed.

All copies of any videotapes produced must either be open-captioned or closed-captioned for persons with hearing impairments. If videotapes contain significant visual action, some of the closed-captioned tapes must be audio-described for persons with vision impairments.

Effective Communication and Accessibility Requirements. If applicants propose to charge a fee for the materials they produce and disseminate, they must charge the same fee for alternate formats as for standard formats.

Applicants who plan to list a voice telephone number on correspondence or promotional materials concerning the grant activities, or on materials produced under the grant, must also list a TTY telephone number. Applicants who do not have a TTY may include the cost of purchasing one in the proposed project budget.

Applicants who plan to use an automated telephone information system to respond to voice calls concerning grant activities must provide comparable service for TTY users. The cost of establishing an automated TTY information system may not be included in the proposed project budget.

All grant activities must be held in accessible facilities and must be available in formats accessible to individuals with communication disabilities.

Materials to be Provided to DOJ. One thousand standard print copies, 100 audiotape copies, 100 large print copies, and 50 Braille copies of each publication produced under the grant must be provided to DOJ.

One one-inch NCSC standard fully mixed and open-captioned edited master videotape, 25 other copies, and, where appropriate, 15 audiodescribed copies of each videotape produced under the grant must be provided to DOJ for use by the Federal government.

A copy of the final text of each document or videotape script produced must be provided to DOJ on computer disk in ASCII or Wordperfect.

Funds for the reproduction of the above materials should be included in the proposed grant budget.

Application Requirements

Under Section 506(d) of the Americans with Disabilities Act, the

Department is authorized to award grants to individuals and non-profit organizations to supplement its technical assistance efforts. All applicants must submit, in the order given, an original and two copies of the following information.

1. A signed SF 424 and SF 424A (Rev. 4/88) application form.

2. A one-page Abstract that summarizes the goals of the project, the nature and size of the population(s) to be reached through the project, and the project strategy; Applicants should state explicitly the number of people expected to be served in the course of the project's activities. Depending on the nature of the project, this may be indicated by the number of copies of print materials to be developed and disseminated, the number of people expected to be trained, the number of people expected to view audiovisual materials, or other appropriate indicators of the scale of the project.

3. A Project Strategy and Plan of Action (maximum length 15 pages) that:

—Addresses each major component identified in the grant priorities specific to the project for which applicant is applying;

—Describes all major activities, events, and/or products that are planned;

—Provides a detailed plan for evaluating the effectiveness of the project, and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience; and

—Provides a description of the applicant's plan for coordinating project activities with other Federal ADA programs and their grantees.

4. A Management Plan that includes a timeline for completion of all project objectives, activities, events, and products.

5. A Budget Narrative required by the SF 424 (Rev. 4/88), which includes the basis for all costs presented in the budget.

6. A brief statement identifying the facilities, equipment, and other resources available for carrying out the project.

7. Job descriptions for positions that are proposed to be funded under the grant.

8. Resumes or qualifications of the key individuals who will fill the grant positions, including consultants, if any (maximum length 3 pages each).

9. Letters of commitment from organizations that will be involved in the project, if any.

10. A certification regarding lobbying, debarment, suspension, other responsibility matters, and drug-free workplace requirements, OJP Form 4061/6.

11. A disclosure of lobbying activities, SF LLL.

(Please Note: Non-profit applicants who have not previously received Federal financial assistance from the Department of Justice may also be required to submit a disclosure of financial capability statement or other documentation prior to the grant award)

Dated: May 25, 1994.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 94–13514 Filed 6–2–94; 8:45 am]

BILLING CODE 4410–01–P

federal register

Friday
June 3, 1994

Part VII

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Monday, June 20, 1994, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at the Weyerhaeuser Auditorium in the Landmark Center, 75 West 5th Street, St. Paul, Minnesota 55102.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4892; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: Future meetings of the Advisory Council on the National Information Infrastructure are planned on: September 13, 1994, October 19, 1994, December 6, 1994, January 26, 1995, February 22, 1995, April 12, 1995, June 14, 1995, August 16, 1995, October 11, 1995, December 13, 1995.

AGENDA:

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Meetings of Three Mega-Projects (separate rooms)*
   Members assigned to each of the three projects will meet together. The projects are:
   Vision and Goals Driven by Specific Applications
   Access to the NII
   Privacy, Security, and Intellectual Property
3. *Reports and Discussion on Mega-Projects*
4. *Intellectual Property Report and Discussion*
5. *Council Discussion*
6. *Application Demonstrations*
7. *Public Questions and Answers*
8. *Adjourn.*

PUBLIC PARTICIPATION: The Council meeting, including the individual Mega-Project meetings, will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Alison Andrews at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov, info@niiac.org, or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through the NTIA Gopher/Bulletin Board System over the Internet at iitf.doc.gov, at 202–501–1920 or 202–482–1199, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue NW.; Washington, DC 20230; Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–13620 Filed 6–1–94; 8:45 am]

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federal register

Friday
June 3, 1994

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89P-0040]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. OTC antitussive drug products are used to relieve cough. This final rule addresses only single-ingredient antitussive drug products containing one of these ingredients. In a future issue of the Federal Register, the agency will propose to amend the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to address combination cough-cold drug products containing diphenhydramine citrate or diphenhydramine hydrochloride. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products in part 341 (21 CFR part 341) that lists in § 341.14 (21 CFR 341.14) the active ingredients that are generally recognized as safe and effective for use in these products. Diphenhydramine citrate and diphenhydramine hydrochloride were not included in § 341.14 at that time. Subsequently, two manufacturers petitioned the agency to amend the final monograph for OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride as monograph active ingredients (Refs. 1 and 2). The petitions are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

In the Federal Register of December 9, 1992 (57 FR 58378), the agency discussed these petitions and proposed that diphenhydramine citrate and diphenhydramine hydrochloride be generally recognized as safe and effective for OTC antitussive use. The agency previously determined that diphenhydramine citrate is bioequivalent and therapeutically equivalent to diphenhydramine hydrochloride (54 FR 6814 at 6824, February 14, 1989). The agency proposed specific warnings and directions for these ingredients for OTC antitussive use. The agency advised in its proposed rule (57 FR 58378 at 58380) that any final rule resulting from this proposed rule would be effective 12 months after the final rule's date of publication in the Federal Register.

The agency invited written comments by February 8, 1993, on the proposed rule and the agency's economic impact determination for the proposal. In response to the proposed rule, the agency received two comments from manufacturers. Copies of the comments are on public display in the Dockets Management Branch (address above).

References

(1) Comment No. CP2, Docket No. 89P-0040, Dockets Management Branch.

(2) Comment No. CP3, Docket No. 89P-0040, Dockets Management Branch.

II. The Agency's Conclusions on the Comments

1. Two comments requested that the agency's proposed OTC antitussive dosage for diphenhydramine hydrochloride (25 milligrams (mg) every 4 hours (h), not to exceed 150 mg in 24 h) be expanded to a range of 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h. One of the comments also requested a corresponding expansion of the OTC antitussive dosage for diphenhydramine citrate, i.e., a dosage of 38 to 76 mg every 4 to 6 h, not to exceed 456 mg in 24 h.

To support an expanded dosage range for antitussive use, one of the comments provided pharmacokinetic data for diphenhydramine hydrochloride dosed at 25 mg every 4 h and 50 mg every 6 h. The data included the following steady state concentrations (C_{ss}), minimum concentrations at steady state ($C_{ss\ min}$), and maximum concentrations at steady state ($C_{ss\ max}$) in nanograms/milliliter (ng/mL) for both dosages; and the areas under the curve (AUC) for both dosages in ng x h/mL:

Diphenhydramine Hydrochloride Pharmacokinetic Data

	($C_{ss\ max}$)	($C_{ss\ min}$)	(C_{ss})	(AUC)
25 mg every 4 h	55 ng/mL	27.5 ng/mL	40 ng/mL	160 ng x h/mL
50 mg every 6 h	85 ng/mL	30 ng/mL	52 ng/mL	312 ng x h/mL

The comment pointed out that the two $C_{ss\ min}$ concentrations are comparable. The comment stated that the 50 mg every 6 h dosing regimen is as efficacious as the 25 mg every 4 h regimen because the 50 mg dose does not fall below the minimum effective concentration. The comment added that further substantiation is provided by the C_{ss} and AUC data, which fall within the minimum effective concentration levels.

The other comment stated that the potential for conflict between the different dosages for antitussive and antihistamine use of diphenhydramine would be eliminated by accepting the broader antihistamine dosage (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h) for products intended for both uses. The comment added that this approach would reduce the potential for consumer confusion. The comment argued that it would not be in the consumer's interest to establish a lower dose for diphenhydramine in products that will not meet consumer expectations of the antihistamine effect. The comment contended that, based on the established safety of diphenhydramine citrate and diphenhydramine hydrochloride for both antitussive and antihistamine use, monograph status for four uses, and potential use for more than one

indication in a cough-cold product, the broader dosage range (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h) should be permitted to provide maximum effectiveness. Both comments concluded that diphenhydramine hydrochloride has been found safe for a variety of OTC uses at dosages of 25 to 50 mg every 4 to 6 h and, thus, safety is not an issue at this dosage range.

In the **Federal Register** of September 9, 1976 (41 FR 38312 at 38341), the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products based its 25 mg every 4 h recommendation for diphenhydramine hydrochloride for antitussive use on data demonstrating effectiveness and acceptable tolerability at this dosage. All approved applications for diphenhydramine hydrochloride as an OTC antitussive are for a dosage of 25 mg every 4 h, based on supporting clinical data. No clinical data have been received by the agency to support the safety or increased effectiveness of higher dosages of diphenhydramine hydrochloride or diphenhydramine citrate for OTC antitussive use either under the OTC drug review or an approved application. One comment submitted pharmacokinetic data concerning diphenhydramine at both the 25 mg every 4 h dose and the 50 mg every 6 h dose showing that C_{ss} min for both regimens were similar. It is therefore likely that dosing at 50 mg every 6 h is effective. That regimen, however, produces higher $C_{ss\ max}$ and almost twice the drug exposure, with increased potential adverse effects such as sedation, but with no evidence of greater effectiveness than the every 4 h regimen. In conclusion, the agency cannot consider to be generally recognized as safe and effective an antitussive dosage (25 to 50 mg every 4 to 6 h for diphenhydramine hydrochloride) that is not supported by clinical data. Therefore, based on the Panel's recommended dosage and the approved application labeling for OTC antitussive drug products containing diphenhydramine hydrochloride, the agency is establishing the monograph antitussive dosage of diphenhydramine hydrochloride as follows:

Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The monograph antitussive dosage of diphenhydramine citrate is as follows:

Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

With respect to the comment's discussion of a single ingredient drug product containing diphenhydramine for concurrent use as both an antihistamine and an antitussive, this issue will be addressed in an amendment to the OTC cough-cold combinations tentative final monograph in a future issue of the **Federal Register**.

2. One comment discussed "multiuse" labeling of OTC drug products that contain diphenhydramine. The comment described this as labeling a product with some or all of the proven pharmacologic activities of the drug whether or not the conditions to be treated are related. As an example, the comment stated that a product containing diphenhydramine could be labeled for both antitussive and antihistamine use. If this occurred, the statement of identity could be expressed as "cough suppressant/antihistamine." The comment stated that the product's labeling could describe each use separately under the product's "Indications," with accompanying warnings and directions for both uses. The comment contended that there is no legal restriction that prevents "multiuse" labeling whether or not the conditions to be treated are related. The comment discussed several aspects of "multiuse" labeling.

This final rule addresses only single-ingredient diphenhydramine citrate and diphenhydramine hydrochloride drug products for antitussive use. The agency acknowledges that "multiuse" labeling is possible for products containing diphenhydramine but is not aware of any such products having been or currently being in the marketplace. The agency intends to address "multiuse" labeling in a future issue of the **Federal Register** in an amendment to the tentative final monograph for OTC cough-cold combination drug products. The agency will discuss: (1) Concurrent use of diphenhydramine as an antitussive and as an antihistamine for concurrent symptoms, and (2) different uses of diphenhydramine with separate full labeling for different, nonconcurrent symptoms. Manufacturers may not introduce diphenhydramine products having "multiuse" labeling into the OTC marketplace until the agency's proposal on how this should be done appears in a future issue of the **Federal Register**.

3. One comment contended that an agency statement in the proposed rule appeared to be inconsistent with the agency's general provisions and administrative procedures for marketing OTC combination drug products under 21 CFR 330.13(b)(2) and Compliance Policy Guide 7132b.16. The agency statement said: "Until the agency amends the tentative final monograph for OTC cough-cold combination drug products, no cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can be marketed OTC unless it is the subject of an approved NDA or ANDA" (57 FR 58378 at 58380). The comment stated that, because FDA recognizes diphenhydramine as both an OTC antihistamine and an OTC antitussive, marketing of diphenhydramine for both claims in combination drug products should be allowed under the provisions of the tentative final monograph for OTC cough-cold combination drug products. The comment listed a number of examples where an antitussive can be combined with an antihistamine and stated that diphenhydramine should be able to perform both functions in the product. The comment contended that this approach should be acceptable provided that all of the labeled uses are for Category I combinations.

This final rule does not address combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive active ingredient. There are a number of issues that need to be resolved before diphenhydramine can be used to perform both functions (antitussive and antihistamine) in a single product. These include, among others, a difference in the monograph directions for use (amount of drug to be taken and time interval for taking the drug) and different warnings related to the individual uses. The agency intends to discuss these matters in a future issue of the **Federal Register**, as noted above. At this time, the agency reaffirms its position stated above that any OTC cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can only be marketed if it is the subject of an approved application.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs

agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Currently marketed OTC single ingredient diphenhydramine drug products already meet the conditions of the final monograph. Other manufacturers will be able to enter the OTC marketplace without having to obtain an approved application. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) 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 in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.14 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 341.14 Antitussive active ingredients.

* * * * *

(a) * * *

(5) Diphenhydramine citrate.

(6) Diphenhydramine hydrochloride.

* * * * *

3. Section 341.74 is amended by adding new paragraphs (c)(4)(vii), (c)(4)(viii), (c)(4)(ix), (d)(1)(iv), and (d)(1)(v) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(vii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6).* "May cause excitability especially in children."

(viii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled only for children under 12 years of age*—(A) "Do not give this product to children who have a breathing problem such as chronic bronchitis, or who have glaucoma, without first consulting the child's doctor."

(B) "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(ix) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled for use in adults and children under 12 years of age*—(A) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(B) "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

* * * * *

(d) * * *

(1) * * *

(iv) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

(v) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

* * * * *

4. Section 341.90 is amended by adding new paragraphs (r) and (s) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(r) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 hours, not to exceed 57 milligrams in 24 hours."

(s) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 hours, not to exceed 37.5 milligrams in 24 hours."

Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13586 Filed 6–2–94; 8:45 am]

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June 3, 1994

Part IX

Department of Commerce

International Trade Administration

Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order and Correction; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-806]

Steel Wire Rope from Mexico; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of affirmative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On May 26, 1993, the Department of Commerce received an allegation of circumvention of the antidumping duty order on steel wire rope from Mexico. Pursuant to that allegation, the Department of Commerce initiated a circumvention inquiry on September 17, 1993, which was published in the **Federal Register** on September 27, 1993 (58 FR 50349).

The Department of Commerce has conducted that inquiry and preliminarily determines that imports into the United States of steel wire strand from Mexico, which are assembled in the United States into steel wire rope for sale in the United States, are circumventing the antidumping duty order on steel wire rope from Mexico within the meaning of section 781(a) of the Tariff Act of 1930, as amended, and 19 CFR 353.29(e). Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1993, the Department of Commerce (the Department) received a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee) requesting an investigation to determine whether imports of steel wire strand (also known as stranded wire or strand) are circumventing the antidumping duty order on steel wire rope from Mexico (58 FR 16173, March 25, 1993) within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act). Subsequent submissions from the Committee, addressing deficiencies in the original request, were received on August 13, August 18, and August 20, 1993. On April 11, 1994, the Committee submitted copies of the Census Bureau data that it had summarized in earlier submissions. On September 27, 1993, the Department published in the **Federal Register** a Notice of Initiation of Anticircumvention Inquiry; Steel Wire Rope from Mexico (58 FR 50349). The inquiry covers the period from October 1, 1992 to September 30, 1993.

On November 19, 1993, the Department issued a questionnaire to Grupo Camesa S.A. de C.V. (Grupo Camesa) and its United States affiliate, Camesa Inc. (collectively, Camesa). Camesa responded to the questionnaire on December 20, 1993. The Department determined that this submission was deficient and issued a supplemental questionnaire on January 31, 1994. The Department received a response to the supplemental questionnaire on February 16, 1994. On March 15, 1994, the Committee submitted comments with respect to Camesa's responses.

Scope of Antidumping Duty Order

The product covered by the order is steel wire rope, which is defined in the Department's antidumping duty order on steel wire rope from Mexico as: "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire."

During the period of this inquiry (POI), such merchandise was classifiable under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and for Customs purposes. The Department's written description of the scope of the order remains dispositive.

Scope of the Anticircumvention Inquiry

Products subject to the circumvention inquiry are entries of strand, which are defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. During the POI, such merchandise was classifiable under subheading 7312.10.3020 of the HTS. The HTS subheading is provided for convenience and for Customs purposes. The Department's written description of the scope of the inquiry remains dispositive.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Tariff Act provides that if:

(A) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(B) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(C) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in (B) above is small, the Department, after taking into account any advice provided by the U.S. International Trade Commission (ITC), may include within the scope of such order the imported parts or components referred to in paragraph (B) above that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. Section 781(a)(2) of the Tariff Act further provides that, in determining whether to include parts or components in an antidumping duty order, the Department shall take into account such factors as (A) pattern of trade; (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

I. Statutory Criteria

(A) Class or Kind of Merchandise

In this inquiry, the merchandise completed at Camesa Inc.'s Rosenberg, Texas, facility and sold in the United States is steel wire rope. As the antidumping duty order encompasses "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire," the steel wire rope sold in the United States is of the same class or kind of merchandise as that subject to the antidumping duty order on steel wire rope from Mexico.

(B) Parts/Components Produced in the Country to Which the Order Applies

The component of wire rope being imported is defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. This strand is produced by Grupo Camesa in Mexico, imported into the United States for closure into steel wire rope at the

Camesa Inc. facility at Rosenberg, Texas, and subsequently sold in the United States by Camesa Inc.

(C) Difference in Value

In this anticircumvention inquiry, we attempted to base our analysis of the difference in value on both a quantitative analysis of the value of the finishing process in the United States, and a qualitative analysis of the nature of the processing performed in the United States. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order, 59 FR 15155 (March 31, 1994).

Generally, in an anticircumvention inquiry, a quantitative analysis is based on a comparison of the value between the finished product sold in the United States and the value of the component imported from the country to which the order applies. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Preliminary Affirmative Determination of Circumvention of Antidumping Duty Order, 57 FR 43218 (September 18, 1992). However, in order to make an effective comparison, the Department must ascertain that it is using the appropriate value for the imported component. To that end, we provided the respondent with three options for demonstrating that the price of the wire strand imported by Camesa Inc. from Grupo Camesa represented a valid market price for use in our difference-in-value calculation. The options were as follows: (1) Sales prices for strand sold to unrelated parties in the home market and largest third country market; (2) purchase prices paid to unrelated suppliers in Mexico by Grupo Camesa for strand; or (3) monthly weighted-average manufacturing costs for strand sold to Camesa Inc. during the POI. In order for us to ascertain the value of the completed merchandise sold in the United States, we also requested that Camesa provide cost data relevant to the production of steel wire rope in the United States.

Camesa, however, failed to provide any of the requested information. Instead, Camesa provided a single price quotation from a supplier in a third country. Camesa's failure to provide the requested information prevented the Department from determining whether the difference between the value of the steel wire rope sold in the United States and the value of the strand produced in Mexico is small. Accordingly, the Department is required to rely on the best information available (BIA), pursuant to section 776(c) of the Tariff Act, to make the determination.

In deciding what to use as BIA, the Department's regulations at 19 CFR 353.37(b) state that the Department may take into account whether a party refuses to provide requested information. Thus, the Department may determine, on a case-by-case basis, what constitutes BIA.

Because Camesa refused to provide the requested information, as BIA, we preliminarily determine that the quantitative difference between the value of the finished steel wire rope sold in the United States and the value of the strand produced in Mexico is small. This eliminates the need for the Department's qualitative analysis of the nature of the processing Camesa Inc. performed in the United States. However, we note that the result of a qualitative analysis supports the BIA assumption that the difference between the value of the imported strand and the value of the finished rope is small, as discussed below.

According to the description of the manufacturing process provided by the ITC in its final affirmative determination of injury (as discussed in the following paragraphs) concerning imports of steel wire rope from Argentina and Mexico (see Steel Wire Rope from Argentina and Mexico, Determinations of the Commission in Investigations Nos. 731–TA–457 and 479 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, August 1991, pages A17–A21), the manufacturing process for steel wire rope consists of three major steps: (1) Drawing rod into wire, (2) stranding wire, and (3) closing strands into rope. Camesa Inc. performs only the closing process in the United States.

In the first step, steel wire rod is heat treated (called patenting), coated, cleaned, and reduced to a smaller diameter through a series of dies to wire. Depending on the amount of reduction during drawing (called the draft), the wire may also undergo patenting and re-drawing to a smaller diameter.

In the second step, strands are formed in a single operation from individual wires laid about a core so that all wires in a strand can move in unison to distribute load and bending stresses equally. This is achieved with "tubular" or "planetary" stranding machines. Strand used for making wire rope is generally lubricated as the wires move into the stranding die. After emerging from the stranding die, the strand is frequently "postformed," a process that involves passing the strand through a series of straightening rollers in order to remove excessive twist. The strand may be die-formed or flattened, or coated at this point.

The third step, the finishing operation, is called "closing" and is accomplished on a tubular or planetary closer, operating in a manner similar to tubular or planetary stranders. Spools or bobbins of strand are placed in cradles in the closer to dispense simultaneously all strands of a sufficient length needed to make a single rope without a splice. The closing die presses the strands together, forming the rope.

Based on the above description of the manufacturing process for steel wire rope, we preliminarily determine that the finishing operation performed by Camesa Inc. in the United States represents a minor portion of the manufacturing process of steel wire rope, and adds minor value when compared to the production of the wire strand, as alleged by the petitioner in its anticircumvention inquiry request.

The Department has determined, based on BIA, that the quantitative difference between the value of the steel wire rope sold in the United States and the value of the wire strand produced in Mexico is small. Though not necessary for this conclusion, the Department further notes that a qualitative analysis of the manufacturing process for steel wire rope demonstrates that the finishing operation performed by Camesa Inc. represents a minor portion of the manufacturing process of steel wire rope. Therefore, we preliminarily determine that the difference between the value of the strand produced in Mexico and the value of the wire rope sold in the United States is small within the meaning of section 781(a) of the Tariff Act.

II. Factors

In accordance with section 781(a)(2) of the Tariff Act, the Department considered the following factors in determining whether to include strand within the order: (A) The pattern of trade, (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

(A) Pattern of Trade

Generally, the Department considers circumvention to be more likely when

the imports of the merchandise subject to the order have decreased. To evaluate the pattern of trade in this case, we examined the timing and quantities of exports of steel wire rope from Mexico to the United States during the POI. We also examined the timing and quantities of Camesa's imports into the United States of steel wire rope produced by Grupo Camesa in Mexico.

U.S. Census Bureau (Census Bureau) statistics indicate that, during the nine months prior to the POI, steel wire rope imports from Mexico to the United States averaged 316.44 net tons per month. However, during the first half of the POI, imports of steel wire rope from Mexico dropped to an average of ten net tons per month. Census Bureau statistics for the second half of the POI were not available.

Although Camesa imported steel wire rope from Mexico to the United States prior to the POI, Camesa had no such imports of steel wire rope during the POI. Thus, the pattern of trade of imports of merchandise subject to the order indicates that circumvention may have occurred during the POI.

(B) Relationship

Generally, the Department considers circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using such imported parts or components. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993).

Camesa Inc., which imports the strand at issue and finishes it into steel wire rope in the United States, is a wholly-owned subsidiary of Grupo Camesa, the Mexican manufacturer and exporter of the strand (see Camesa submission of December 20, 1993, page one). Since all of Camesa Inc.'s purchases of strand during the POI were from Grupo Camesa, these purchases are from a related party within the meaning of section 773(e)(4) of the Tariff Act. Accordingly, the relationship between Grupo Camesa and Camesa Inc. would make it more likely that circumvention of the antidumping duty order may have occurred during the POI.

(C) Increase in Imports of Components

Generally, the Department considers circumvention to be more likely when imports of parts and components which are used in the production of merchandise subject to the order have increased after issuance of the antidumping duty order. The Department reviewed Camesa's imports of strand after the issuance of the order, and compared these imports to those prior to the order.

We note that Camesa's imports steadily increased after issuance of the order through the end of the POI (see Camesa submission of December 20, 1993, Attachment Five). This pattern of imports of strand from Mexico indicates that circumvention of the order on steel wire rope may have occurred during the POI.

Affirmative Preliminary Determination of Circumvention

After consideration of all the factors discussed above, the Department preliminarily determines that circumvention of the antidumping duty order on steel wire rope from Mexico has occurred within the meaning of section 781(a) of the Tariff Act.

We base this determination on the following: First, the merchandise finished at Camesa Inc. and sold in the United States is of the same class or kind of merchandise as that covered by the order and is completed from merchandise produced in the order country. Second, on the basis of BIA, the Department preliminarily determines that the difference between the value of the steel wire rope sold in the United States and the value of the strand used in the production of steel wire rope is small within the meaning of section 781(a) of the Tariff Act. Third, Camesa's imports into the United States of strand from Mexico increased during the POI, while Camesa's imports into the United States of wire rope from Mexico ceased after the Department issued the affirmative preliminary determination of sales at less than fair value of steel wire rope from Mexico. Finally, Camesa Inc. is a wholly-owned subsidiary of Grupo Camesa. Thus, the pattern of trade, relationship between Grupo Camesa and Camesa Inc., and level of imports into the United States support a finding of circumvention of the antidumping duty order.

Based on this affirmative preliminary determination of circumvention, we have preliminarily determined that strand, as defined above, falls within the scope of the antidumping duty order on steel wire rope from Mexico, pursuant to section 781(a)(1) of the Tariff Act.

Suspension of Liquidation

In accordance with section 773(d) of Tariff Act, the Department is directing the U.S. Customs Service to suspend liquidation of all entries of stranded wire from Mexico having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The merchandise subject to suspension of liquidation is wire strand of the kind used in the production of steel wire rope, as defined in the "Scope of the Anticircumvention Inquiry" section of this notice. The U.S. Customs Service shall require a cash deposit or posting of bond in the amount of 111.68 percent. This suspension of liquidation will remain in effect until further notice.

Notification of the International Trade Commission

The Department, consistent with section 781(e) of the Tariff Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on steel wire rope from Mexico. Pursuant to section 781(e) of the Tariff Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department. In such a case, the ITC will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 37 days after publication of this notice. Any hearing, if requested, will be held 44 days after publication of this notice. The Department will publish the final determination with respect to the circumvention inquiry, including the results of its analysis of any written comments.

This preliminary affirmative circumvention determination is in accordance with section 781(a) of the Tariff Act and 19 CFR 353.29(e).

Dated: May 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–12798 Filed 5–24–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-806]

Steel Wire Rope From Mexico; Correction to Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/International Trade Administration/Department of Commerce.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

CORRECTION: In the notice of affirmative preliminary determination of circumvention of the antidumping duty order on steel wire rope from Mexico published elsewhere in this issue of the **Federal Register**, the Department of Commerce (the Department) incorrectly stated under the "Suspension of Liquidation" section that:

The U.S. Customs Service shall require a cash deposit or bond posted thereof in the amount of 111.68 percent.

In accordance with 19 CFR 353.29(i), in the event of an affirmative preliminary determination under section 353.29, the Department will instruct the Customs Service to require a cash deposit. There is no provision for the posting of bonds. Therefore, the sentence should not have included the phrase "or bond posted thereof." The correct sentence should read as follows:

The U.S. Customs Service shall require a cash deposit in the amount of 111.68 percent.

This notice is published pursuant to section 781(a) of the Tariff Act and 19 CFR 353.29(e).

Dated: May 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-13569 Filed 6-2-94; 8:45 am]

BILLING CODE 3510-DS-P

federal register

Friday
June 3, 1994

Part X

Department of the Interior

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, MT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, MT

ACTION: Notice.

SUMMARY: This notice increases the cost of electric power to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Indian Irrigation Project of the Flathead Reservation. The Bureau of Indian Affairs (BIA) has been informed that the Montana Power Company (MPC), which sells electric power to MVP, has raised its wholesale power rates by 3.0%. The MPC increase, which went into effect on September 1, 1993, is based on adjustments in the Consumer Price Index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. Accordingly, the BIA is adjusting the local retail power rates charged by MVP to reflect the increased cost of purchased power.

DATES: MVP will adjust its rates to account for increased power costs, effective on June 3, 1994.

ADDRESSES: Bureau of Indian Affairs, Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6702; or Bill Rauch, General Manager, Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–823–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Department Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The Notice increasing the MVP rate was published on September 15, 1993 (58 FR 48426). The affected public and interested parties were provided the opportunity to submit written comments during the 30-day period subsequent to September 15, 1993. No comments were received during this comment period.

This adjustment is the result of an increase in the electric power rates charged by MPC, one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust its electric power rates annually based on the Consumer Price Index. On August 3, 1993, MPC announced the rate increase of 3.0 percent, effective September 1, 1993. The following table illustrates CPI–U increases, mill/kwh increases, and the financial impact of the new retail rates on the various rate classes.

CHANGES TO RETAIL RATES BY RATE CLASSES

Rate class	Present	New	Increase charge
Residential:			
Basic charge	$11.00/mo	$11.00/mo	None.
(Includes KWH)	127 kwh	127 kwh	None.
Energy charge	$0.04709	$0.04719	$0.000010.
#2 General:			
Basic charge	$11.00	$11.00	None.
(Includes KWH)	109 kwh	109 kwh	None.
Energy charge	$0.05495	$0.05505	$0.000010.
Irrigation:			
Horsepower charge (/HP)	$10.84/HP	$10.84/HP	None.
Energy charge	$0.03590	$0.03600	$0.00010.
Small and large commercial:			
Basic charge	None	None	None.
Minimum charge	$38.00	$38.00	None.
Demand charge	4.34	4.34	None.
Energy charge:			
First 18,000 KWH	0.04255	0.04264	$0.00009.
Over 18,000 KWH	0.03538	0.03547	$0.00009.

FUTURE ACTION: Notice of the final retail rate, along with the Table illustrating the rate increases and their impact on retail rates, will be published in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Regulatory Analysis

Executive Order 12866

In accordance with the criteria of Executive Order 12866, the Department of the Interior has determined that this rule is not major and does not require a regulatory impact analysis.

Paperwork Reduction Action

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment under section (2)(C) of the National Environmental Policy Act of 1969 (hereinafter NEPA), 42 U.S.C. 4332(2)(C), and is categorically excluded from the NEPA process pursuant to Part 516 Department Manual, Chapter 2, appendix 1(1.5).

Authorship Statement

The principal author of this rule is Stanley Speaks, Area Director, Bureau of Indian Affairs, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

For the reasons set forth in the preamble, the rates charged for electric

power by the Mission Valley Power Utility are to be increased as set forth above.

List of Subjects

Indians, Electric power.

Dated: May 6, 1994.

John W. Tippeconnic,

Acting Assistant Secretary—Indian Affairs.

Ada E. Deer,

Acting for Assistant Secretary—Indian Affairs.

[FR Doc. 94–13242 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–02–P

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Federal Register

Vol. 59, No. 106

Friday, June 3, 1994

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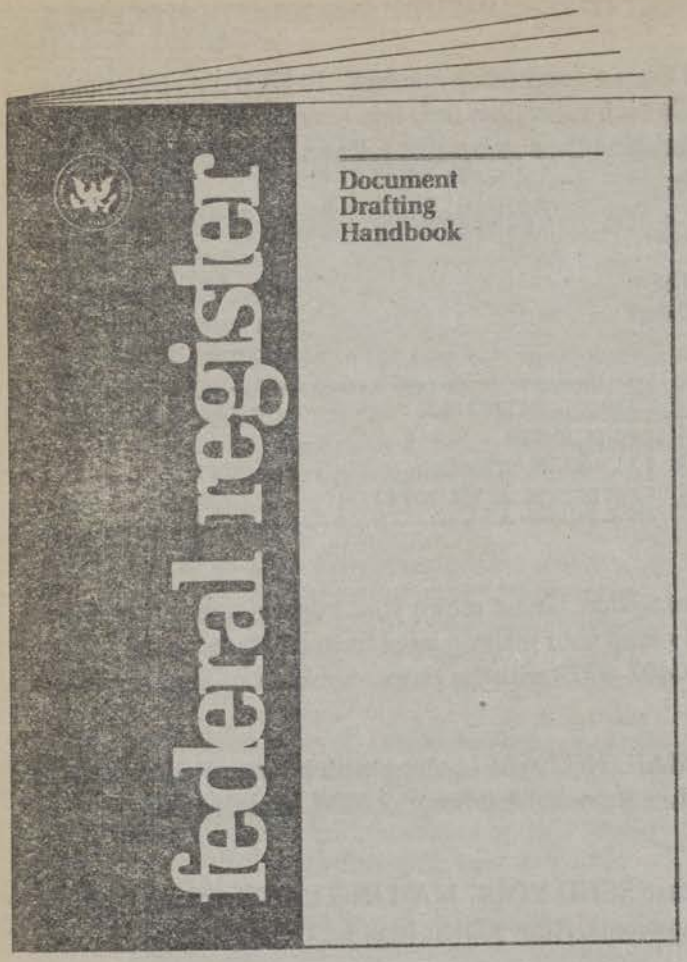

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